An exposition of the Kinges Prerogatiue collected *out of the great Abridgement of Iustice* Fitzherbert, and other olde Writers of the lawes of England, by the right worshipful sir William Stannforde Knighte, lately one of the Justices of the Queenes *Maiesties Courte of common Pleas.*

Whereunto is annexed the Proces to the same Prerogatiue appertaynynge.

1573.

Imprinted at London in Fleete- streate within Temple barre at the signe of the Hande and *Starre, by Richarde Tottle.*

Cum priuilegio ad imprimendum solum.

(.·.)

To the right honorable ſir Nicholas Bacon knight, lord keeper of the great Seale of Englande: Richard Tottell wiſheth healthe and longe life, with increaſe of honour.

NOt longe ſithens, righte honorable, and my eſpeciall good Lorde, there was deliuered to mee a Collection of the Kinges prerogatiue, whiche Maiſter Staunforde had gathered and dedicated vnto your honoure: whiche woorke becauſe it is thoughte well of by the Sages of the Lawe, and wel worthie to be printed, I am therefore the bolder to put it in print, and publiſhe the ſame. And althoughe the ſaide Maiſter Staunforde verye ſhortely after that hee hadde dedicated the ſame booke vnto your Lordeſhip, were for his wiſedome, grauitie, learning, integritie, & ſincere dealinge, aduaunced to bee a Iudge in the chiefe Courte of this Realme for common plees, and for his good ſeruice therein was by iuſte deſert made knighte, aud albeit that your Lordſhip alſo ſithens that time haue atchieued the place,

title and degree of high honour by the iudgement & calling of the Queenes moſt excellent maieſty: Yet I haue printed the Epiſtle dedicatorie of the ſaid woorke, in the ſame termes that the Authour thereof vſed, and with the ſame ſtile that your honour, and he bothe then had, when he dedicated the ſaide woorke vnto your Lordſhip, as a monument and token of the mutual & longe continued amitie betwene you: moſte humbly prayinge your Lordſhip to accepte in good parte, accordinge to your accuſtomed goodneſſe, this my boldenes with your honour, and to pardon the ſame.

This 20. daie of Nouember.

Your honours moſt bounden
Richarde Tottell.

Gulielmus Staunfordus Nicholao Bacono Regiæ Maiestati à Tutelarum procuratione. S.D.P.

(.·.)

QVanquam Anglicanæ leges, (amice singularis) haud minorem merentur laudem, quam Iudex Forteſcueus libro de earum laudibus conſcripto, eis tribuere videtur: tamen quoniam earum cognitio tam procul nobis diſsita ſit, profectio ad eam tam ſupra modum longa ac operoſa, tum viæ & ſemitæ tam aſperę, tam ſalebroſæ, tam inamœnæ ſint, vt ad ſui aditū pauciſsimos inuitet, quá plurimos abſterreat, vel potius auertat: Optarem in tanta iuriſperitorū turba, quam Anglia nunc habet, aliquid excogitari poſſe, leuandis legum Studioſis, pro longo iſto ac moleſto itinere. Vt propiore ac commodiore via ducti, valerent & proficiſcendo & abſoluto itinere, alias deguſtare literas: quibus non ſolum legalem ſcientiam multum illuſtrarent, ſed & munia eis à Regia Maieſtate mandata, tum pulchriūs, tum honorificentiūs adminiſtrarent. Id quod (meo iudicio) cōmodiſsimè fieri poſſit, ſi tituli, in magna (quam vocant) Fitzherberti Epitome, vel a Iudicibus noſtris, vel ab alijs legum peritis, ſedulo forent euoluti atq; elaborati, hoc eſt, omni titulo, in claſſes ac ordines diſtributo, ſingulis eorum actis ac cauſis certæ legum regulæ ac Maximæ prę̃iderent. Exempli gratia. In Breuis titulum cadere poſſunt hæc, videlicet, Forma, vitioſa Nomenclatura, ſeu pſonæ, ſeu vici, Eadē res bis petita, Obitus vel actoris vel rei, Nominis alterutrius partis pendente lite mutatio, cæteraq; huiuſmodi quæ nunc nimis longo titulo ſparſa tam tumultuariè reperiuntur, vt multo maiorem tum eruditionem, tum ſudores, tum vigilias exigat eorū diſtributio, quām rectè diſtributa

ediſcere. Et tamen non poſſum committere, quin tantæ epitomes ſcriptorem, vel ampliſsimis laudib9 veham, qui ſumma ſua doctrina, exactiſsimo iuditio, immenſis, ac pene dixerim exanclatis laboribus, tam numeroſam voluminum multitudinem, quibus vel legendis vix vnius hominis ætas (quantumlibet viuacis) ſufficeret: in vnum duntaxat volumen atq; adeo epitomen contraxit, vt nunc noſtratibus iuriſperitis modo volentibus minima opera cõponere liceat quippiam tam facile, tam vtile, tam frugiferũ: vnde ſtudioſi dimidiato tẽpore quo ante hac legibus obdormire ſint vſi: cum maturiorem, tum certiorem notitiam aſſequerentur. Quo nomine, rei mihi tam vehementer expetitæ typum quendam propoſui, ac quaſi primas inde lineas duxi, Recipiens ad me hmoi predictorum titulos: qui Regiam prerogatiuam ſpectant: nõ quod ſum aliqua ex parte dignus, rem tam eximiam, tamque ſublimem tractare: nec quod eruditione id præſtare valeam: Siquidem de meo, nihilo plus hic eſt, quam collectio ac diſpoſitio tantum earum rerum, quæ eiſdem titulis includuntur. Sed magis quod iſtud meum commentitium, qualecunque ſit, tibi ſemper diſtinaueram, id quod in nullum alium præter hunc titulum, commodè experiri potui, tum quod ad magiſtratum tuum Regij procuratoris tutelarum, maxime pertinere videbatur, tum quod compertum habeo, te iuriſprudentiæ incumbentem, hunc quẽ propoſui morem hactenus obtinuiſſe: quod fecit, vt reliquos tuos contemporaneos eruditione multis ſtadijs præcurras: tum denique quod tuum iuditium ſuper hiſce rebus in quibus aſsidue verſaris ac exercitaris requiro. Certus me hic rem habere cum homine tam amico, vt ſi quid lectione dignum inuenerit, id pergrate ſit accepturus, ſin minus, æqui bonique conſulturus, reliquum quod habet vitij emendaturus: aut ſaltem ad id cõniuere velle confido. Proinde iſtud, quicquid eſt, tibi nuncupo, lege, ac pro tua voluntate fruere.

Vale.

To the right woorshipfull and his *singuler friende Nicholas Bacon*, the kinges attournee of his court of wardes & liueries *William Staunforde wisheth healthe*, longe lyfe, and prosperous successe.

(.·.)

AL be it the lawes of England, right singuler frende, are worthy no lesse honour, praise, and commendation, then Justice *Fortescue* in hys booke written of the praises thereof, dothe attribute and geeue vnto them, yet for as much as the knowledge of the saide lawes is placed so farre of, the iourney thereunto so exceding longe and painful, and the wayes and pathes so rugged & vnpleasant: I would wishe that amongest such plenty of lerned men as be at this day some thing were deuised to helpe the studēts of their long iourney, ẏ they (being led a more nere & plesāt way) might both as they went, & after they came to their iorneis end, gather some other knowledge, not only therewith to garnish their owne science, but also the better to serue in such honorable roome as they be called to serue the kinge & soueraign lord in. Which thing might wel come to passe after my poore mind, if such titles as be in the great abrigement of Justice *Fitzherbert*, were by the Judges or some other learned men labored & studied, that is to say, euery title by it self by special diuisions digested, or ordered & disposed in suche sorte, that al the iuditial actes and cases in the same might be brought & appere vnder certain principles, rules and groundes of the said lawes. As for example, vnder the title of *Briefe* might come these titles, Forme, Misnaming of the person, misnaming of the town: One thing

twise demaunded, death of the pleintifes side, death of the defendaunts side, chaunginge of the name of the pleintife or defendant, hanging the suit, with many such other like which nowe as thinges scattered abroade and out of order lie hidden within the said long title, that it requires much more learning, paines and study well to order and dispose the matter in the same, then (after order made) to learne & beare it awaye. And yet surely there cannot be too muche praise and commendation geuen vnto that greate learned man, the Author of the said great Abrigemēt, which by his great learning, exact iudgement, and intolerable paines, brought such a infinit number of volumes (to the reading wherof a mans life would scant haue sufficed) to a muche more lesse and narower compasse, whereupon nowe these learned menne with lesse paines might compyle the thing that should be so easie, so profitable, and fruitful to the students therof, that in half those yeres they now lye sleeping in, they might come to a riper & more certaine knowledge and better iudgement: For which cause I haue drawen as it were a patern of the thing I so much desire, taking vpon me such titles as appertaine vnto the kinges prerogatiue, not as one in any parte worthye to treate of a thinge so high and pretious as that is, or in learning sufficiēt, or hable thereunto (for of mine owne here is nothing more then only a collection and disposition of that that is already contained in the saide titles) but rather because I haue al waies meant this deuise vnto you, which I could not do or practise so well vppon any title, as vppon this that appertaineth vnto your office of Attourneyship of the wardes and liueries, partly for that I know your self to haue obserued the like order in your own study, which in fewe yeres hath gotte you aboue others, the great learning you haue, partly also for that I couet your iudgement in these matters, wherewith you bee dailye in vre and exercised,

knowing

knowing that I haue to doo herein with one so muche my friende, that if there be any thing worthy the readinge, he wil take it thankefully, and if not so, well, yet wil he take it in good part, the rest that is amisse he will beare it with me. This therefore what so euer it be, I dedicate vnto you, reade it, peruse it, and make of it what you wyll. Fare you well from Greys Inne the vi. of Nouember.

Añ Doñi 1548.

(.˙.)

Les ſummaries de les chapters de ceſt preſent liuer.

Roy auera le garde de toutes lour terres que tient de luy en Chiefe. fol. 5

Roy auera le marriage de cheſcun queux terres il auoit en gard. fol. 10

Roy auera le primer ſeiſine de toutes les terres dount ſon tenaunt en chiefe fuit ſeiſie en fee. 11

Roy auera lendowment & mariage de ſes veufs & fems. 15

Roy auera homage de cheſcun parcener, & ſur partition cheſcun de eux auera part del terre tenus del roy. 22

Roy auera gard de heir marry per ſon pier deins lage de conſent. 26

Roy auera fyne pur alienation ſon tenant ſans licens. 27

Roy auera ſon preſentment nient obſtant que Leueſque ad fait collation pur laps. 32

Roy auera le gard de terres de Idcots. 33

Roy purueiera pur luy que eſt de non ſane memory. 36

Roy auera Wreck, balenas, & Sturgiones. 36

Roy auera leſchete de treſpas des Normans de qui que ils tient 38

Si heir le tenant le Roy en chiefe enter auaunt liuere nul franktenement luy accrue, & la feme perdra ſa dower. 40

Le roye auera leſchetes que aueigne quaunt temporalties deueſque ſont en ſes mains. 41

Per grant de roy fees, auoulons, & dowmentes des femes ne paſſa, ſi ne ſont ſpecialment noſmes. 41

Le roy auera chatels forfaits, & an, iour, & waſte. 44

Quels proceſſes ſerra agard de trouer office pur entitler le roy, et ſur quel heir auera liuere. 51

Ou le roy en title, ou en ſeiſin, ou hors de ſeiſin et poſſeſſion, et comment. 53

Enterpleder. 57

Trauers. 60

Monſtrans de droit. 70

Petition. 72

Scire facias ou iſſera deuant liuery ou ouſtre le mayn. 76

Ouſter le main. 77

Liuery. 79

Reſeiſir. 80

Iſſues meane. 84

FINIS.

¶ *Prerogatiua regis, edita an.* 17. *E.* 2.

¶ *Le Roy auera le garde de toutes lour terres que tient de luy en chiefe.* *Chap.* 1.

Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per seruitium militare, de quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt, de quocunque tenuerint per huiusmodi seruitium, dum tamen ipsi tenuerunt de rege aliquod tenementum ab antiquo de corona vsque ad legittimam ætatem heredis: Exceptis feodis Archiepiscopi Cantuariensis, Episcopi Dunolm̃ inter Tyne & Tese, feodis Com̃ & Baronum de marchis de terris iu marchia vbi breuia domini Regis non currunt. Et vnde prædictus Archiepiscopus, Episcopus, Com̃ & Baron̄ habeant huiusmodi custodiam, licet alibi tenuerunt de Rege.

Prerogatiua, is as much to say, as a priuilege or preeminence that any person hath before an other, which as it is tollerable in some, so is it moste to be permitted & allowed in a prince or soueraign gouernor of a realme. For besids that, that he is the moste excellent and worthiest parte or member of the body of the common wealthe, so is he also (through his good gouernance) the preseruer, nourisher, & defender of al the people being ỹ rest of ỹ same body. And by his great trauels, study & labors, they enioy not onely their liues, landes, & goodes, but al that euer they haue besides, in rest, peace, and quietnes, as *Seneca de consolatiõ ad Polibium* saithe: *Omnium domos illius vigilia defendit, omnium otium illius labor, omnium delitias illius industria, omnium vacationem illius occupatio.* For which cause the laws do attribute vnto hi̇ al honor, dignity, prerogatiue, & preeminẽce,

which

which prerogatiue doth not only extend to his owne perſō, but alſo to all other his poſſeſſions, goodes, and cattels. As that his perſon ſhal be ſubiecte to no mans ſuit, his poſſeſſions cannot be taken frō him by any violence or wrongful diſſeiſin, his goodes and cattels are vnder no tribut, tol or cuſtome, nor otherwiſe diſtrainable: with an infinite number of prerogatiues more, which were to tedio⁹ here to recite. Yow be it, for ſo much as in euery realme the kinges prerogatiues are no ſmal part and portion of the profits and commodities of the Crown of the ſame, & namely within this realme of England, it hath ben thought good heretofore to declare and ſet forth in writinge certaine of the moſt higheſt and weightieſt matters and articles touchinge the ſaide prerogatiues. And hereupon was there a declaration made in writinge by authoritie of parliament holden in the 17. yeare of the reigne of kinge Ed. the 2. the beginning whereof is in manner and fourme as is aboue written: Yow be it, this parliament maketh no part of the kings prerogatiue, but longe time before it had his beinge by thorder of ẏ common law, as may painly appere by thē ẏ haue written before the making of ẏ ſaid ſtatut of prerogatiue. For *Glanuill* that was chief Iuſtice in king Henry the ſeconds daies writing of this matter, ſaith in this wiſe li. 7. cap. 10. *Notandū quod ſi quis in capite de dño rege tenere debet, tunc eius cuſtodia ad dominum Regem plenè pertinet, ſiue alios dominos habere debeat ipſe hæres ſiue non, quia dominus Rex nullum habere poteſt parem, multò minùs ſuperiorem.* Alſo *Bracton* which wrote in ẏ latter time of king Henry the thirde ſaythe, *Lib. prim de cuſtod' & marit' dominorum: Si aliquis hæres terram aliquam tenuerit de domino rege in capite, ſiue alios dños habuerit ſiue nō, dominus rex alijs præfertur in cuſtodia hæredis, ſiue ipſe ab alijs prius feoffatus fuerit vel poſterius, quum Rex parem non habet in regno ſuo.* Bothe theſe writers do not onely agree in euery pointe, but alſo geeue a reaſon why the king ſhould haue the prerogatiue cōtained in this firſt

chapter

chapter. Also *Britton*, an other olde writer, which wrote his booke in kinge Edwarde the firste name, saithe: *Li.3.cap.2 Des heires nequedent si ils y eient ascuns qui aunceſter moruſt ſeiſie de aſcun terre tenu de nous en chiefe des auncientes demeans de noſtre Corone volons auer les gardes de toutes les terres dont garde appent qne deuient deſcend a ceux heires come lour heritage oueſque toutes les blees en tiels terres troues maintfoits de qui fees que les terres ſont. Britton* here not onelye agreeth with the other, but also geueth the kinge the corne growinge vpon the groundes which the kinges tenants hold at time of his deathe. Also in the greate Abridgemente of *Fitzherberte Prerogatiue* 26. you shall fynde in Anno 21. H. 3. written in this manner: *Nota quod lex Angliæ & consuetudo eiuſdem eſt, quod à quibuſcunque aliquis feoffatus fuerit, dum tamen à domino Rege aliquo tempore feoffatus fuerit per tenementū quod tenetur per ſeruitium militare, quod dñs rex habeat cuſtodiā omnium terrarum & tēntorum tam de feoffamento aliorum, quàm de feoffamento proprio.* Whiche texte if a man wil any thing wreſt, he may make the kinges prerogatiue more liberal then is made or declared by this statut or any other, the writers before remēbred, for it extendes to any lands holden of the king by knights seruice, whether they be holden of the king in capite or not: but for asmuch as the said other writers haue written so plainly in this matter, we wil stand to them, & extend the prerogatiue no further: howbe it (as I saide) al those writers beinge so longe before the making of this statute, doe plainly argue & proue ỹ this statut doth but confirme and declare that that was the common law before, vnleſſe we would doubt of the tyme of the making therof, as *Litleton* doth in H.15. E.4. f.12. et 13. but without doubt it was made in King Edward the seconds time, & that plainly appeareth by the wordes contained in the 4. chapt. of this prerogatiue, whiche be these: *Et illa voluntas tempore Regis H. patris Regis E. aſtimari conſueuit &c.* Whiche woordes were not written in Kinge Edwarde

Edward the first daies, for then the words had ben *Patris nostri*, so that (as I thinke) it is not to be doubted, but that it was written in the time aboue limited and expressed. Then goe we to the expositiō of this first chapter of prerogatiue. The woordes bee: *Dominus Rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per seruitium militare*. These woordes goe generally to all the kinges tenauntes, that is to saie, as wel to his tenantes for terme of life, as to his tenaunts of estate of inheritaunce, if it so be, that he that is in the reuersion haue the saide reuersion by descent, and bee heire vnto the saide tenaunt for terme of lyfe, not forcinge whether hee haue the reuersion by descente from the saide tenaunte for terme of life, or els from any other auncestor, as take the case to be this, a mā holdeth no lands of the king, but onely as tenaunt by the curtesie, and those lands are holden in chief by knight ser uice, and the said tenant by the curtesie is seased in his demesne as of fee of lands holden of other lordes & dieth, the landes holden of other descend vnto him in the reuersion, whiche is in deede next heire vnto the said tenaunt by the curtesie, in this case the king shal not only haue the wardship of the landes ẏ were holden by the curtesie, if the said heire be within age, but also the landes holden of other by vertue of this prerogatiue. And if the sayde heire were of full age at the time of the death of the saide tenaunt by the curtesie, the king shall haue primer season bothe of the one land and of the other, as it appeareth in the newe *Natura breuiū fo.258*. Like law is it, if a woman be indowed of landes holden in capite, & is seased of fee simple of landes holden of other and dieth seased, and they descend vnto ẏ heir which is in the reuersion: in this case the kinge shall haue both these landes by vertue of this prerogatiue, like as hee shall haue in the other case before, and that may you see in *26.li.ass.P.57*. for in both these cases they be the kinges tenāts, & hold of him by Knights seruice in capite, for tenāt in

dower

dower in the kings case holdeth not of the heire, but onely of the king, as it shal appeare more fully hereafter fol. 10. But if he in the reuersion be not heire of the landes holde of other in the cases aboue remembred otherwise it is. But what if he in the reuersiō haue the same reuersion by purchase, and not by descent, whether shal the king then haue his prerogatiue or not: and as to that it shold seme by the newe *Natura breuium fol.* 259. that the kinge shall haue his prerogatiue in that case also, for there the remainder was to the heire and to his wife, and to his heires of their two bodies lawfully begotten, & the husband in the remainder did sue liuery, howbeit against ỹ laine as me seemeth, *Ideo quere*, but if the case in the saide newe *Natura breuium* had bene, that landes holden by knights seruice in capite, had bene geeuen to one for terme of his life, the remainder ouer in fee, which person in the remainder hath issue & dyeth, and the tenant for terme of life holdeth lands of other Lords and dieth, which descend to the issue that is in ỹ remainder, here it might be said, that the kinge should haue prerogatiue in the whole, like as he had in the cases before remembred of tenaunt by the curtesie, and tenaunt in dower, for the like reason will serue in the one case, that serueth in the other. The wordes of the statut be further: *De quibus ipsi tenentes fuerunt seisiti in dominico suo vt de feodo die quo obierunt de quocunque tenuerint.* These woordes rather appertayne vnto the landes holden of other, then to the landes holden of the Kinge in Capite, as it shoulde appeare by the cases beefore remembred, and then by these wordes the Kinges tenauntes in his life time muste him selfe be seased either in possession or reuersion of those landes that bee holden of a common person that shall descende vnto his heire. For if hee were not seased thereof, but they descend vnto his heire from some other ancestor, the king shal not haue his prerogatiue in them, as appeareth

reth in H.5.E.4 fo.10.but whether the kings tenant were seased of thē in his owne right, or in an other bodies right it maketh no differēce. As take ỹ case he wer seased of thē but in right of his wife, & hath issu & dieth, his issue is in the kings ward for the lands that his father held in Capite, & afterward the wife dieth, the issue being stil in warde, the king shal haue prerogatiue in these lands of the wife also, because the husband was seased of them as of his demeane as of fee the day of his death, & so within the cōpasse of this statut. And this case may you see in H.13.H.4 f.6. And note, that notwithstanding this statute speaketh but of landes, yet seruice are to be taken by the equity of the same, as it is plainly proued by the wordes of *Diem clausit extremum*, which saithe: *Quantum terræ tenet de nobis, aut de alijs tam in dominico, quàm in seruitio.* So that if one hold of the kings tenant by certain seruices, the king shall haue the seruices in ward, for they be in nature & place of the lande ỹ is holden, & so shal it be supposed. And therfore when the kinge hath those seruices in ward, and the tenant that holdeth by those seruices dieth his heir within age, if the said seruices were knightes seruice, the king shal haue ward by reason of wardship: But yet by that no prerogatiue in the other landes of the second warde which are holden of the other Lordes, as it may appeare in *Gard.* 105. A.6.B.2. For the kings tenant was neuer seased of those other lands, ne yet of the seruices that they were holden by, & so without the compasse of this prerogatiue. Like lawe it is, where the kinge hathe the temporaltie of a bishop in his custodie duringe the time the See is vacante, and one that holdeth of those temporalties by knightes seruice dyeth, hys heire within age, the Kinge shall haue the wardship of him, and the reason of it is, because the king hath the wardship of the temporalties, by reason whereof thys wardship commeth, whiche temporalties the king hath in warde by

the

the order of the common law, *in iure corone*: For they bee barronies, which can bee holden of none other then of the kynge in capite, and then by the common lawe, (take it he were no better then a common person) yet hys highnes must haue the wardshippe of them that holde of those temporalties by knyghtes seruice if they fal duryng the time the sayde temporalties be in his handes, wyth such lands as they holde of those temporalties but not wyth such landes as they holde of other, and then must the heire therof when he commeth to his full age sue a liuere as shal more playnly appere when we come to the third chapiter of this prerogatiue. The wordes of the statute before recyted are *in dominico suo*: this worde demeane is not here taken to bee the very possession or taking of the profites, for if the kynges tenaunt dye seased but of a reuersion or of a remainder in landes holden of a comon person, and during the minoritie of his sonne the particuler tenaunt dyeth, the kyng (this notwithstandinge) shall haue this lande in warde as he hath the rest, as it may appeare. M.22. H.6. fo.18. & M 15. E.4. fo.12. So it is if the kinges tenaunt dye seased of an aduowson appendant to landes holden of a common person M.46. E.3.11. The wordes be further, *die quo obierunt*, and therefore if the kinges tenaunt dye seased, of landes holden of a common person and a straunger abateth, yet the heire shalbe in warde, and the kyng may enter, and so is it if the heire recouer by assise of mortdaūcester, as it appeareth in the newe *Natura breuium fol.* 257 & *Liuere* 28. T.12. R.2. But take the case to be that the kings tenant dye not seased but is disseised and dyeth, whether in thys case the kyng may haue prerogatiue or not, and it seemeth that hee maye, for in all suche cases where the heyre hath a ryght of entre, the kynge maye enter in name of the heyre and holde it afterwarde in warde: but yf the heire haue but a tytle of entre or ryght of accion it

seemeth to bee otherwise, holbeit looke for those matters in the saide booke of H.15. E.4. fo.13. & T.12. H.7. folio 20. & 18. lib. assis. H.18. where it is adiudged that of landes holdē of the kynge in chiefe, the kyng as in ryght of his warde myght sease by a *scire facias* vppon a tytle of entre. And note also that there is somewhat more to bee vnderstanded heare then is written or expressed, that is to saye, that the sayde landes must discende to ỳ kyngs ward, for notwithstanding the kynges tenaunt were seased in hys demeane as of fee daye of his death in landes holden of a cōmen person, yet if the same after his death do not discende to the kynges warde, but to another heire, the king shall not haue prerogatyue in them as it appeareth in H.12. E.4. fol.18. The wordes of the statute bee also *de quocunque tenuerunt*. Put case the kinges tenaunt is seased of certein thinges whyche neyther are holden of the kyng nor yet of any other, whether shall the kyng haue them in warde or not, as Market, warren, rent seeke, or auowsons en grosse: and as it shoulde appeare in H.3. H.7. fol 4. H. 4.6. E.3. fo.12. & H 21. H.6. fo.11. the kinges cannot haue them in warde, and yet in H.15. Edward 4. fo.14. some holde opinion to the contrarie, therefore inquire and learn what the law will in these cases. The wordes of the statute bee *Per huiusmodi seruicium*, that is to say, by lyke seruice. By these woordes the landes that are holden of other must be holden also by knightes seruice or els the statute extendes not to them, and yet the lawe is taken to the contrary, for if the landes holden of other bee holden but in Socage or free burgage, the kyng shall haue prerogatiue in them, as it appeareth in H.24. E.3. fo.47. for this statut is but a confirmation of the common lawe, and therefore shalbee taken by equities and namely when the law was so taken in *Prerogatiue* 25. T.9. H.3. whiche was long time before the makyng of this statute. Holbeit *Bracton. Li.2. de*

custod.

custod.et releuis,& Britton.li.3.ca.2. doth extende this prerogatiue no further then to lands holde of other by knights seruice, therefore enquire for the cause and reason therof. The words be further, *Exceptis feodis archiepi. Cantuar.&c.* This exception extendes not to the bodye, wherefore the kyng shall holde that in warde against all men, but it extendes to suche landes as are holden of these persones exempted by this statute. But case then that anye of these p. sons purchase a seignorie since the tyme of the makynge of this statute, shall the kyng haue his prerogatiue in the landes holden of that seignorie or not: And it is cleere hee shall notwithstanding the aforesaide woordes of exceptiõ: for they do not extende but to suche fees as were theires at the tyme of the making of this statute. Then further, for asmuche as there be dyuers statuts concernyng ward shippe, made aswell before as since the tyme of kyng Edward the second, let vs see whether this prerogatyue wyll extende to these statutes or not, and it seemeth it doth, for asmuch as this prerogatiue hath beene euer from the beginning as I haue saide before: And therefore if the kynges tenaunt being seased of landes holden of a common person maketh a feoffement thereof by collusion contrary to the statute of Marlebridge ca.6. to defraude the lorde of the wardshipp and dyeth, the king hauing his heire in warde & this matter founde by office shall cease vppon a *scire facias* if the collusion bee auerable, or wythout a *scire facias*, if the collusion bee apparaunt and holde the same in warde by force of this prerogatiue and that appeareth in T.9.H.4.folio 6. So likewise where the statute made in 4.Henrici 7.capitul 17 puydeth that the heire *cestuy que vse* shalbee in warde. But case that the kinges tenaunt in capite before the statute in Anno 27.H 8. had made a feoffement of landes whiche he holdeth of a common person to the vse of himselfe & his heires and died before that statut,

in this case the kyng shoulde haue had his prerogatyue in the landes so being put in feoffement to an vse euen as if his tenaunt had died seised therof, as it appereth T.12 H.7 fo.19 Then last of all let vs learne howe the lordes whose fees the king hath in warde by his prerogatiue shall bee demened and ordered for the rentes to bee dewe for theire seignories during the wardshippe whether they shal lese them as they do the landes. And it appeareth 29.li. ass.p.5. that they had them by peticion at the kynges hands, and therewith agreeth thoppinion of *Hill.* in H.24. E.3.fol.24 and the newe *Natura breuium* fo.158. Learne the reason of these bookes, for it shoulde seeme to mee the lawe to bee otherwise, because that all mesne seigniories are suspended duryng the time the kyng hath the tenaunty in ward, if it bee not percase for the surplusage of a rent seruyce which the mesne may sue for to the kynge by way of petition. And to saye as H.26. H.8.fo.10. that the heire shalbee charged at his full age with the sayde rentes it were not reason, for then both his land should be in ward, and yet be charged to pay rent for the same: wherefore it seemeth that these bookes are againste the lawe. And wyth mee agreeth *Bracton* in his first booke in the chapter *de custodia* where he sayeth. *Et cum tali ratione sint aliorum feoda in manu domini regis, predict' ratione alii capitales domini feod' illorum nihil poterint exigere de terris et tenementis illis nec in seruic. nominatur nec in auxilijs ad filiam maritandam vel filium primogenit' militem faciendum vel in sectis quamdiu terre fuerint in manu domini regis, sed precipietur vic. quod huiusmodi distringere non permittat.* Howbeit *Bracton* in his sayd booke in the chapter, *De releuiis* sayeth, that the heire at hys full age shall paye his relieke to euery of his lordes notwythstanding he hath ben in ward, *quod nota*: for in al other cases he neuer paieth relief, ỹ is to say where he hath bene in ward, & he maketh no other reaſō for it but this s. *quod hoc*

est

eſt ſpeciale in rege propter ſuum priuilegium. and ſo is the booke in the 24 yere of king Edwarde the thirde fol.14. and the 39 yere of the ſame kynge, *Relief* 7. Howbeit *Brittons* oppinion.li.3 cap.2.is that the heire ſhall pay no reliefe to the other lordes after he hath beene in the kinges warde, and commeth to his full age, and I cannot fynde that the heire in anye ſuche caſe ſhould or doth paye anye relyef to the kyng,that is to ſaye,where hee hath beene in warde: therefore learne what experience teacheth vs in theſe caſes. Hoyes leſtatute fait anno 2.E.6.ca.8. en Kaſtals collection. *Eſchetors* 15.

Le Roy auera le mariage de cheſcun queux terres il auoit en garde. Cap.2.

ITem Rex habebit maritagium hered.infra etatem & in cuſtodia ſua exiſten̄ ſiue terre & hered. eorundem ſint ab antiquo de corona ſiue de eſchaetis que ſunt in manu domini Regis ſiue habuerit maritagium ratione cuſtod.terrarum dominorum eorundem hered.nullo habito reſpectu ad prior. feoffamenti licet de aliis tenucrunt.

All that is contained in this Chapiter was the kinges prerogatiue by the order of the common lawe, as it maye appeare in the bookes of *Bracton.li.1,ti.de herede Sockman in cuius cuſtodia eſſe debeat*, and *Britton.li.3.ca.2.* and in a booke M.24.E.3.fo.31.& 65. Where it is sayde that no lorde can be more auncienter then the king,for all was in him and came from him at the beginning. And therefore his highneſſe muſt haue prerogatiue in the body of whoſoeuer the infaunt holdeth beſydes, bee it that the landes are holden of the kinges highnes as of the auncientnes of the Coron or of his new eſchetes,or come vnto hym as ward by reaſon of wardſhip.T.12.H.4.fo.18.or that his highneſſe doo purchaſe the ſeigniorie of him ỹ is Lorde by poſterioritie,

or purchaseth a manor holden of one of his honors, which are of his newe eschetes, of whiche manner thaunceſter of thinfant helde by poſteritie: in al theſe caſes the kynge ſhalbe preferred to the wardſhip of the body and mariage before any other lorde of whom the aunceſter alſo helde ye day of his death by prioritie of feoffement, that is to saye, more auncient feoffement: howbeit in theſe caſes his highneſſe ſhall not haue wardſhip in the landes holden of thother lordes, becauſe his tenaunt helde not of him in chief, but onely ſhall haue preferrement in the body & mariage before all other. Then ſince the common law and ſtatute doth geeue the king this prerogatiue, let vs ſee whether his highneſſe may by graunting away his ſeignorye to an other, graunt alſo wyth the ſame hys prerogatyue to the grauntee, that is to saye, whether his grauntee ſhall haue the ſame prerogatiue in the body of the chyld as his highneſſe might haue hadde, in caſe the ſeigniorie hadde ſtyll continued in him. And it appeareth in *Prerogatiue* 23 H.12. E.3. & H.14. Y 4. folio 9. that if the kyng graunt the ſeignory to an other in fee ſimple that the grauntee ſhal haue no prerogatiue, becauſe there remaineth nothinge in the king of that ſeignorie vngraunted. But if the graũt were made to a common perſon for no longer time then during his lyfe, and the reuerſion ſaued to the kinge, than learne what the lawe will in that caſe, for wee haue in Y.5. E.3. fol.4. that where the graũt was made to the Queene for terme of her life the reuerſion in the kynge that her grace had prerogatiue euen as the kyng him ſelfe ſhoulde haue hadde, and for none other reaſon there made but only becauſe ſhee helde in ryght of the kyng. But a man may add further to that reaſon and ſay that her grace and a common perſon bee not lyke, for though ſhee bee a perſon exempt from the king and may ſue and be ſued in her owne name, yet that that ſhee hath is the kinges, & looke what

ſhee

shee loseth so much departeth from the king, and therfore all her tenauntes of parcell of her estate maye haue ayde immediatelye of the kynge without making her partye or priuie thereunto, and so shee holdeth merely in the kings right: but a common person doth not so. For the kynge hath nothing to do with the thing that he holdeth during the lyfe of the lessee, howe be it if the graunt bee made to the Queene for tearme of her lyfe the remainder ouer in fee, it seemeth that her grace getteth no prerogatiue, and so it is sayed in M.24. Edwarde 3. folio 65. Lyke lawe ys it if the kynge graunt an honor to the lorde Prince and his heires kynges of Englande, it seemeth by the better oppinion in M.21. Edward 3. folio 41. that the lord Prince shall haue therewyth the kynges prerogatyue, because it is not seuered from the crowne after the fourme as it is geeuen, for none shalbee inheritour thereof but kynges of this realme. And note well that notwithstandinge the lawe were so, that none in thys case but the Queene or Prince might haue the kynges prerogatyue, yet if the kyng hauyng the seignorye in his handes after that the warde doth fall, graunt the same ward ouer, the graun-tee shall haue and enioye the preferrement of the mary-age against the other lordes euen as the kynge shoulde hymselfe, because that notwithstanding any such graunt, yet the kyng is sayde styll gardeyne and the infaunt dry-uen to sue for his liuerye at the kynges handes when hee commeth to his full age, and not at the handes of the grauntee, whyche in thys case is but onelye as a com-mittee. And so is the booke in T. twelue Henry the fourth 25. Lyke lawe is it in the case aboue remembred where the Queene hath prerogatiue, and the warde falleth, and shee graunteth her wardeshippe ouer, her grauntee shall haue preferrement in the mariage before all other lords. And that also appeareth in H.5. Edward the thirde fo.4.

howbeit that case was enforced by that that the kyng confirmed the state of the grauntee, like lawe is it if the king haue a warde of right of his crowne, and graunteth it ouer with speciall woordes, that is to saye, that the said grauntee shall also haue warde by reason of wardshipp, if it fall during the minoritie of the first ward, in this case if there fall a warde whiche holdeth by posteriority of ỹ heire that is in warde, yet that notwythstanding the sayd grauntee shall haue the preferment in the warde of the bodye and maryage, euen as the kynge hym selfe shoulde haue hadd if he had made no suche graunt, because it is meerely in ỹ kynges ryght whyche remayneth styll lorde, & the graũtee none other but as it were hys comyttee, and thys appeareth also in the 12. yeare of kynge Henrye the fourthe folio. 25.

Le Roy auera primer seisin de toutes les terres, dount son tenaunt ẽ chiefe fuit seisie in fee. *Cap. iii.*

ITem Rex habebit primam seisinam post mortem eorum qui de eo tenent in capite de omnibus terris & tenementis de quibus, ipsi fuerunt seisiti in dominico suo vt de feodo cuiuscunque etatis heredes eorum fuerint capiend exitus eorundem terrarũ & tenementorum donec facta fuerit inquisitio prout moris est & ceperit homagium huiusmodi hered.

In the 52. yeare of kynge Henrye the thyrde longe tyme before the makynge hereof was there an other statute made at Marlebridge concerning this matter: In the 16. chapter whereof it is thus prouyded. *De hereditate autem que de domino rege tenetur in capite sic obseruandũ est, vt domin⁹ Rex primam habeat inde seisinam sicut prius inde habere consueuit, nec heres nec alius in hereditatem illam se intrudat, priusquam illam de manibus domini regis recipiet prout huiusmodi hereditas de manibus ipsius et anteceſſorum suorum recipi consueuerit,*

sueuerit, et hoc intelligatur de terris & feod. que ratione seruicii militaris, socagii vel seriantiæ seu iure patronatus in manibus domini regis esse consueuerunt. Bothe these statutes declare themselues to be of none other force then as a confirmatiō of that, that was the kinges prerogatiue by the order of the common lawe, as it may appere by these wordes, *prout moris est, sicut prius habere consueuit, recipi consueuerit, esse consueuerunt.* And therewith agreeth also *Britton folio 17.* The woordes of the statute bee, *Rex habebit primam seisinam.* What *primam seisinam* is, it is declared by the woordes that followe. s. *capiendo omnes exitus &c.* by whych woordes may appere the kynge shall not onelye seise, but also receaue the whole profites till liuerie bee sued, whych suite most commonlye hath bene and is, wythin the yeare and day nert after the death of hys tenaunt, and therefore the kyng vseth to take no more then the first fruites, that ys to say one yeres profites if there bee not apparaunt default in the heire that hee will not sue hys liuery, in whiche case then the kynges highnesse shalbee aunswered of all the profites taken till liuery bee sued or at the least tēdred and after pursued wyth effect, yea and if it bee a generall liuery and not rightfullye pursued accordynge to the order of the lawe, the kynge shall reseyse and be aunswered of all the meane profits from tyme of suyng of the sayde lyuerye, for when the liuerie is missued it is as it had bene neuer sued. Howbeit this reseisure shal not bee wythout a *Scire facias*, as I shall thereof speake more at large hereafter. But if the heire or hee that shoulde sue liuerye do make a ryghtfull suite for the same accordynge to the order of the lawe, and as muche as in hym lyeth to doo to haue lyuery, howbeeit the kyng will not but will bee aduysed ere hee make hym liuery and so protracte the tyme, in this case his highnes of ryght may not haue the profytes from the tyme the partye was thus delayed, but

ought

ought to restore them vnto the partye vppon his liuerye, as may appere in H.1.H.7.fo.28. And thereupon it is to bee noted that there bee two kynde of liueries, the one generall, the other speciall. The generall is the liuerye that this statute speaketh of, the especiall maye bee more properly treated of, when wee come to the thirteenth chapiter of this prerogatiue. And this generall liuerye is some times made *cum exitibus*, and sometymes *sine exitibus*, but for the moste parte *sine exitibus*: For where it is made *cum exitibus*, from the tyme of the seysure, there it is properlye no liuerye, for it appeareth the king neuer seised rightfullye or by any tytle. As for example, if the kynge will seise the lande that is founde in thoffice to be holden of tharchbyshoppe of Caunterburye or Byshopp of Durham or anye suche persons as are exempted in the firste chapter of this prerogatiue, in this case they shall haue an *Ouster le main vna cum exitibus*, as it appeareth in li.16.Ed.3.p.29. The same is it, if of landes holden in Capite, there bee a lease made for terme of lyfe, the remaynder ouer so a strãger, tenaunt for terme of lyfe dyeth and this matter foũd by offyce, nowe if the kyng seise, he in the remainder shal haue an *Ouster le main vna cum exitibus*, as it appeareth in H.14.H.4.fo.32. P.18.E.3.fo.21. T.24.E.3 fo.29. Lyke lawe it is where two holde ioyntly of the kinge, and the one dyeth, and this matter founde by office, and yet that notwythstandyng the kyng seises, hee that suruiues shall haue an *Ouster le main vna cum exitibus*, as it appeareth 44 ass.p.36. and in the newe *Natura breuium*. fol.256. & 257. For in all these cases where the *Ouster le main* is *vna cum exitibus* the kyng ought not to haue seised, and so sayethe *Thorp* T.45.E.3.fo.18. The wordes of the statute bee further, *Post mortem eorum qui de eo tenent*. Upon this, it is to be seene at what tyme after the kynges tenaunts death this liuerye shalbee sued. If the possession of the free holde immedi-

A Gl temps ludye sera sine possesson & Reuton &c.

mediatlye after the death of the kynges tenaunt discende vnto his heire, it is to be sued foorthwith, and if but only a reuersion discende, then it is not to bee sued tyll after the death of the particuler tenaunt, as it may appeare *Natura breuium f.*258. where the heire sued not liuery til after the death of the tenaunt by the curtesye, tenaunt in dower and tenaunt for terme of lyfe. But learne what the lawe shoulde haue beene if the kynges tenaunt had dyed seised of a reuersion whereuppon rent hadde bene reserued, hys heire of full age, whether hee shoulde haue then sued liuery foorthwith, or els to haue taried tyll the death of the particuler tenaunt for in H.7. H.6. folio 3. *Iune* thynkes he shoulde tarye, or els it might followe the kynge shoulde haue double liuery, that is to say one for the rent another for the land, but *Paston* is in ỹ contrary opinion, and resembles it to a reuersion depending vpon an estate tayle wyth a rent reserued, howebeit at this daye there is an election geeuen vnto the heire, that is to saye eyther to sue his liuerye immediatly after the death of his auncestor in the life of these particuler tenauntes, or els to tarry vntill they dye, and if hee sue hys liuerye in theire lyfe, hee payeth for primer seisin but the moitye of one yeres profite, and if after theire death then hee payeth the whole yeares profite, howebeit if there bee a rent reserued and hee pursueth his liuerye in the lyfe of the particuler tenāt it seemes besydes the halfe yeares profite of the value of the lande hee shall also paye the whole yeres profite of the rent reserued, therefore learne what common experyence teacheth vs in that case. The woordes of the statute bee, *Qui de eo tenent in capite.* By these woordes hee must holde of the kynge in chiefe, for if he holde not of hym in chyefe the kyng can haue no primer seisine. And yet you shall see in the newe *Natura breuium* folio.263. that of landes in the Citie of London holdē of the kyng in burgage

Elecon.

the

the king had primer seisin, and the heire thereof sued hys liuerie, but the president seemes to be against the law, for *Markhā* sayth in M.7.E4.f.17. that in Neuels case it was founde that ones father died seised of certein land that he helde of the king in Burgage, and thereupon therchetor did seise, whiche seiser by thaduise of all the Justices was discharged by a *supersedeas* awarded to therchetor, for the woordes of bothe the aforesaide statutes be verye playne therein, that is to saye that he must holde of the kynge in capite, but whether he holde of the kinge by knightes seruice or by Socage in Capite, it maketh no matter so that he hold in capite, for the king in both cases shall haue primer seisin although not with so large a prerogatiue in the one case as in the other. For in the first case where the tenure is knightes seruice in capite the king shall haue the same prerogatiue when the heire is of full age at the deth of his auncestor as hee shoulde haue had if hee had beene wythin age, that is to saye primer seisin aswell in ỹ landz holden of others as of him selfe, bee it that the landes holden of other be holden by knyghtes seruyce or in Socage But otherwise it is where the tenure is but a tenure in Socage in capite, for there the kyng shall haue no primer seisine in landes holden of other, namely if they bee holden of other by knightes seruyce, as it appeareth plainlye by the statute of *magna charta* capitulo 27. and in the newe *Natura breuium folio* 256. nor yet anye primer seysin of landes holden of hymselfe in Socage in capite: If the heire at the deathe of his auncestor bee not of the age of fourteene yeres, as appeareth H.35. Henrici sexti folio. 52. T. 45. Ed. 3. folio 19. and also in the new *Natura breuium folio*. 356. *& folio*. 259. But in euerye of these cases they to whome the body belongeth shall haue an *Ouster le maine* of the landes *vna cum exitibus* that ys to saye, the lordes of whom the land is so holdē by knightz seruice in thone case

and

and the *Prochein amy* in the other case. But where the landes bee holden of the kyng in Socage in capite, & the heir of the age of 14. yeres at the death of his auncestor, there the king shall haue primier seisin & the heire driuen to sue lyuerye, for there is no person that can make any tytle to the heire or his landes but onely the kynge, and therefore the king must haue his primier seisin, & the heire driuē to sue his liuerie by expresse words of the forsaide statute of Marlebridge, & so it semeth also in that case ỹ his highnes shal haue primier seisin in landes holden of other, so they be holden but in Socage, for the reason aboue remēbred. *Tamen quere.* The wordes of the statute be farther, *de omnibus terris & tenementis de quibus ipsi seisiti fuerunt in dominico suo vt de feodo.* These woordes may be conferred & coupled with the first chapiter of this statute of prerogatiue which hath the very self same wordes. And therfore looke in what cases noted vpon the first chapter the kynge hath his prerogatiue by reason of wardship, in all the same cases shall hys highnesse haue prerogatiue by reason of primer seisin if the heire were of ful age at the deathe of his auncestor. Wherefore to rehearse them here particulerly it were but superfluous, except it be in the case onelye of collusion geuen by the statute of Marlebrige c.6. where ỹ heire is within age, because it speaketh nothing of ỹ heire that is of full age. And therefore in that case it seemes ỹ king cannot haue like benefite of primer seisin as he hath of wardshippe, when the heire is within age. Howbeit there is a booke in that poynt left at large whyche is M. 17. E. 3. f. 63. M. 7. E. 3. *Reliefe* 12. & *Collusion* 29. P. 31. E. 3. and there the case was. The tenaunt enfeoffed his sonne and heyre and dyeth before the feoffee gaue notyce thereof to the lorde. *Ideo quere.* The woordes of the Statute bee farther, *Cuiuscunque etatis heredes ipsorum fuerint.* To these woordes also shall the firste chapiter of this estatute hath relacion

relacion, for they plainlye declare that if the heire were within age at the death of his aunceſter, the kynge ſhall haue primer ſeiſin and the heire driuen to ſue his liuerye, notwithſtanding alſo the king hath had the wardſhipp of him. For the woordes be generally ſpoken and maye bee extended aſwell where he was within age at the deathe of his aunceſter, as where he was of full age. And ſo hath it bene euer vſed, ſauing that where he hath bene in warde hee payeth but one halfe yeres profite for primer ſeiſine, and in the other caſe he payeth the whole. The woordes of the ſtatute bee farther, *capiendo omnes exitus eorundem terrarum & tenementorum, donec facta fuerit inquiſitio prout moris eſt et ceperit homagium hered.* By theſe woordes it maye appeare that the king after the death of hys tenaunt and before anye office founde, myght ſeiſe the lands and take the profits, whyche thing ſurelye is true, as playnelye ys proued by the writte of *Diem clauſit extremum* whiche hath theſe woordes *Cape in manum noſtram omnia terras & tenementa &c. donec aliud inde preceperimus et per ſacramẽtũ pborũ hominum diligenter inquiras &c.* So the ſeiſer goeth before the inquiſition, howbeit ſince the ſtatute made at Lyncolne Anno 29 E. 1. called *ſtatutum de eſcaetoribus*, it is not vſed to ſeyſe till office be founde, and then the kyng to bee aunſwered of all the profites ſince his tenauntes decreaſe, whyche commeth all to one effecte. And yet that ſtatute doth not reſtraine the ſeyſer, but that thercheator maye ſeiſe at this daye wythout office. By the aforeſayde ſtatute of Marlebridge capitul' 16 it is expounded and plainlye ſett forth of what landes and fees the kynge ſhall haue primer ſeyſin, for theſe bee the woordes. *Et hoc intelligatur de terris & feodis que ratione ſeruicii militaris, ſocagii, vel ſeriantie ſiue iure patronatus in manibus domini regis eſſe cõſueuerunt.* By theſe woordes it maye appeare that hee that

is

is warde because of wardshippe shall not sue liuerye, or where one holdeth of the kynges warde by knyghtes seruyce or in Socage and dyeth his heire of full age the kinge shall haue primer seisine of the landes, that are so holden of hys warde, and the saide secounde heire dyuen to doo hys homage or fealtie as the case shall require to the kynge, and also to paye his reliefe vnto hym and to sue liuerye of the saide landes, as it appeareth hee dyd in the newe *Natura breuium folio* 61. & 62. For it is wythin the compas of these woordes, *que ratione seruitii militaris*. So ys it if the kynge haue a Bishoppes temporaltyes in hys handes durynge the tyme that the See is vacant, and one that holdeth of that temporalties by knyghtes seruyce or in Socage dyeth hys heire wythin age, in thys case, after that the kynge hath hadde the wardeshippe, the heyre at hys full age shall paye primer seisine and sue his liuerye. And so shall hee doo if hee bee of full age at the tyme of the death of his auncestor, for the woordes of the statute bee, *De feodis que iure patronatus in manibus domini regis esse consueuerunt*, and therewyth agreeth the newe *Natura breuium folio* 254. But learne if the kynges tenaunt in chyefe dye, hys heire of full age and one that holdeth of the heire before hee hath sued hys liuerye dyeth, his heyre also beynge of full age, whether in thys case the kynge shall haue primer seysine of the landes of the seconde heyre or no, as hee shoulde haue hadde yf the heire of his tenaunt hadde beene wythin age, and in the kynges warde at the tyme when thys secounde heyre dyd fall, and it seemethe to mee hee shall, for the reason made afore.

Then laste of all whether thys Prerogatyue extende to anye Statute made synce the tyme of kynge Edward the secounde, and it seemes it doth, and that for the reason noted in ỳ first chapter. fo. 9. as ỳ feoffees of *Cestuy que vse*

before

before the statut made in the 27 yere of king H.8. vsed to sue an *Ouster le main sine exitibus*, which was in nature of a liuere for the heire of *cestuy que vse* which had ben in ward. Item forasmuch as there bee exceptions in the firste chapiter and none in this, whether they also bee comprised within this chapiter or not: and mee seemes they bee, because these .v. chapiters must concurre together and agree in euerye thynge. And if the heire bee wythin age at the death of his auncester, the Archebyshop of Caunterburye shall haue an *Ouster le main vna cum exitibus*, so that ỹ heire shall not sue liuere of that, and then by the same reason if he bee of full age at time of the death of his auncester, for the lyuere in the one case and the other is geeuen by this chapiter as mee seemeth, *Tamen quere.*

Le Roy auera lendowement & mariage de ses veufs et femmes. *Cap.iiii.*

ITem assignabit viduis post mortem virorum suorum qui de eo tenuerint in capite dotem suam quæ eas contingit &c. licet heredes fuerint plenæ etatis si vidue illę voluerint, et viduę illę ante assignationem dotis suæ predictæ siue heredes plenæ etatis fuerint siue infra etatem iurabunt quod se non maritabunt sine licẽtia regis. Et si se maritauerint sine licencia regis tunc rex capiet inmanu m suam nomine districtionis omnes terras & tenementa quæ de eo tenentur in dotem donec satisfecerint ad voluntatẽ suã ita quod ipsa mulier nihil capiet de exitibus &c. quia per huiusmodi districtiones huiusmodi mulieres seu viri eorum finem faciant regi ad voluntatem suam, et illa voluntas tempore regis H. patris regis E. estimari consueuit ad valentiam predictæ dotis per vnum annum ad plus nisi vberiorem gratiam habuerint. Mulieres que de rege tenent in capite aliquam hereditatem iurabunt similiter cuiuscunque fuerint etatis quod se non maritabunt sine

ſine licentia Regis, & ſi fecerint, terra & tenementa ipſarum eodem modo capiantur in manum domini regis quouſque ſatisfecerint ad voluntatem regis.

This ſtatut likewiſe doth but confirme the comon lawe before, as it appeareth by the ſtatut of *Magna charta Cap.7.* which was firſt made in the time of king H. the third, whiche is, *Quòd nulla vidua diſtringatur ad ſe maritandum, ita tamen quòd ſecuritatem faciet, quòd ſe non maritabit ſine aſſenſu noſtro, ſi de nobis tenuerit.* And alſo in the 24. H. 3. *Prerogatiue* 27. it is ſaide, that when the kinges tenaunt dyeth, and his wife endowed, ſhee cannot marrye without the kinges licence, & if ſhee doo, ſhee & her huſbande ſhal make fyne. Therpoſitiō. It ſhould appeare by the wordes ẏ the wiues of al them that holde in Capite cannot haue dower at any mans hands but only the kings, if his grace will, for in ẏ his grace hath a prerogatiue aboue al common perſons as wel for that ſhee ſhall therby hold of his highnes in chiefe, as for that ſher ſhal not marry without licence: for ſo ſhee might be married vnto the kinges enimie, and therby the ſtrength of the crowne enfebled. Therefore it is prouided, that his highnes may aſſigne the dower, whether the heir be of full age, or within age, to the intent, that ſhee before the receiuing therof ſhal take a corporal othe not to mary wout ẏ kings licēs. The maner of the aſſignmēt whether the heire be of ful age, or within age, is very wel ſet forthe in the newe *Natura breuium fo.263.* in the writ *De dote aſſignanda.* Howbeit for ẏ ſome things are there noted whiche ſeeme to repugne with our booke caſes, I purpoſe to conferre the one with the other, and ſee how they can agre. In the ſaid *Natura breuium* it appeareth, that notwithſtāding the king had cōmitted ẏ land ouer to an other, yet ẏ womā ſued in the Chācery to the king for her dower, & not to the cōmittee, & in our bokes you ſhal ſee many writs brought againſt the cōmittee, yea & in ſome of thē ẏ ſhee recouered her dower, and the kinge not made party to ẏ ſame, as the

booke is in H.4.H.7.fo.1.which is more at large. *Aid de roy* 33. where ẏ writ of *Dower* was brought againſt ẏ kings cõmittee, who pleaded in barre wõut prayng in aide of the king, & the barre was found againſt him, & notwõſtanding ẏ it did appere vnto the Juſtices, ẏ the king might be touched therby, yet wold they not ſurceſſe, but awarded ẏ the demandant ſhould recouer, and toke for their cauſe ẏ ſtatut of *Bigamis*, *A.4.E.1.cap.3.* which ſaithe in this manner: *De dotibus mulierum vbi aliqui cuſtodes hæreditatis maritorum ſuorum cuſtodias habent ex dono vel cõceſſione regis, Siue cuſtodes rem petitam teneant, ſiue hæredes dictorum tenementorum vocentur ad warrantum ſi excipiant quòd ſine rege reſpondere non poſſunt, non ideo Superſedeatur, quin in loquela prædicta prout iuſtum fuerit procedatur.* This *Natura breuium*, and this booke of 4. H. 7. ſeeme not to agree. For where takes ſhe any oth, where ſhe recouers by a writ of dower in ẏ comõ place: which othe ſhee muſte needes haue taken if ſhee had ſued in the chãcery, or how may the committe endow her, whẽ percaſe he will endow her of more then ſhee ought to haue, or endow her where ſhe is not dowable by the lawe: wherunto one may anſweare in this wiſe, that his wrõgful endowment ſhal not conclude the king, but ẏ his grace may reſourm the thing when he wil, & ſince he hath committed al his intereſt ouer, *Durante minore ætate*, his grace may permit thendowment made by the committee, if it be rightfully made to ſtand: & ſpecially bicauſe of the ſtatut of *Bigamis*, which allows it ſo to be. And notwõſtanding ſhee take no othe, yet can ſhee not marry wõut the kinges licẽce, for this endowmẽt by ẏ cõmitte is ẏ kingꝭ endowmẽt vpon the matter, for that that he holdeth in right of ẏ king which continues ſtil gardein, notwõſtanding any ſuch commiſſion or grãt of the wardſhip. Therfore it ſhold ſeme ẏ after the ward cõmitted ouer (as is aforeſaid) it is at the election of the woman, whether ſhe wil ſue to the king in ẏ chancery, or at the comon law againſt the committee. But

if the

if the kinge do but committe the warde ouer *Durante bene placito*, otherwise it is, for ther she must sue only to ỹ king as appeareth in *Dower* 169. 8. E. 2. And note well that this statut of *Bigamis* before recited wil also, ỹ if ỹ heir of ỹ husbād be vouched to warrāty being in ỹ custody of those committees, ỹ the Justices shal not surcesse no more thē whē ỹ writ of dower is brought against ỹ cōmittee. Contrary to this branch of the said statut are there diuers bookes, as M 18. E. 3. f. 38. H. 8. E. 3'15. and *Aid de roy* 64. H. 18. E. 3. where ỹ said cōmittee cāe in, ỹ heir beig vouched in their warde & shewed how thei held of ỹ kīgs leaz, & prayd in aid of ỹ kīg & had it, wherat I do not a litle marueil because of this statut of *Bigamis*, which was neuer spokē of, ne yet remēbred in these bookes, their iugemēts as it should seeme beinge directly againſt this statut. Howbeit ỹ maner of ỹ lease doth not there certeinly appeare, ỹ is to say, whether the wardship were grāted *Durante bene placito*. or *Durante minore ætate*, for ỹ wold make a difference, as I haue said before. Also ỹ booke is P. 39. E. 3. f. 8. wherein a writ of *Dower* brought against ỹ cōmitte of ỹ cōmittee, there was aid graunted of ỹ king, but ỹ seemes to be out of ỹ cōpasse of ỹ statut of *Bigamis*, which speakes only of thē that haue it of ỹ kinges grāt, & so hath not ỹ secōd cōmitte, therfore learn what the law wil in these cases. But if ỹ wardship be cōmitted to the wife wout any exceptiō or forprise of her dower, she by that is cōcluded to claim any dower during ỹ said wardship, as it may apere in M. 2. H 4. f. 7. in ỹ said *Natura breuiū f.* 264. D, It is also said that wher liuery is made to ỹ heir before ỹ womā sue for her dower in ỹ chancery, & in ỹ said liuery there is no sauig made for her dower, that thē she must pursue her writ of dower against her heir: & ỹ resō that is ther made is, because ỹ king hath made liuery generally wout any reseruation of *Dower* to bee assigned by his highnesse: whereunto I answeare, that whē liuery is sued before assignment of dower, there is most commonly in the writs of liuery a sauing made for her dower, if it so be ỹ she wer

found the kings tenants wife in the office, and thee being so found, if the heir sue a generall liuery, leauing out these wordes, *Salua dote*, or *retenta dote &c.* it is a good cause for the king to rehearse the whole, for the liuery is misused in ỹ case, for that I lerned of Justice *Spilmā*, which noted it so in 11. of H. 8. but if she be not found wife in the office, ỹ heir may sue his liuery without any such sauing, to say, ỹ the kinge by making suche a liuery should waiue the aduauntage of his prerogatiue in the dower, that seemes not to be true, vnles the said waiuer were by expresse words, wherfore it seemes the heire in that case after liuery is not bound to yelde vnto her dower, but her only remedy is to sue for the same to the king, & that must be first vpō an office (as I thinke) finding that shee was his tenants wife, *Ideo quere*, and learn whether she may haue dower in any case, either in the Chancery, or by writ of *Dower* at the common lawe against the committe or the heir, vnles shee be found wife first by office as is aforesaid, except it be in cases where the king wil refuse this prerogatiue. And note that like as the king hath a prerogatiue by this statut to yelde dower to ỹ wife of his tenāt, so hath his highnes a prerogatiue by the common lawe to withholde dower from the wife of his tenant, which no comon person hathe. As put case in a writ of *Dower*, the heire be vouched in the kings warde, and the tenant shewes for his lyne the feoffement with warranty of the husbande which is father to him that is vouched, yet that notwithstanding shee shal recouer her dower against the tenant, & not against the heire, because that els ỹ kinge should lose the wardship of ỹ lands, wher the woman may (without her losse) as wel recouer her demand against the tenant, as she should against the king, and yet if the kinge were a comon person in that case, he should lose the wardship of so muche as shee demaundeth. And this booke is H. 26. E. 3. fo. 58. where it is said, that the kinges committee of the wardship shal not haue the prerogatiue, & therwith agrees H. 8. E. 3. fo. 15. And note ỹ like as ỹ king hath

prero-

prerogatiue againſt the wife that bringeth the writ of *Dower*, ſo ſhall hee haue prerogatiue againſte the tenaunte in the ſaide writ of *Dower*: for notwithſtandinge that the tenant in ỹ ſelfe ſame caſe haue iudgemẽt to recouer ouer in valu againſt ỹ heir which is in the kings ward, yet he ſhal haue no execution of that recouery tyll the lande bee ſued out of the kings hands. Howbeit M. 27. E.3.fo.87. is contrary to the ſaide booke of 26. E.3. *ideò quære*. And learn and enquire, whether a womã being thus endowed at ỹ hands of the feffee of her huſband of ſuch lands as he died not ſeiſed of, & whereof the king at that time can haue no wardeſhip, whether ſhee may marry or not, without ỹ kings licence, & it ſemes ſhe cannot, for any wordes compriſed wͭ in this ſtatut. And it appeareth in 26.li.all.p.57. that wher a woman was endowed by gardein in chiualry, and afterwards the garden cõmitted treaſon, wherby the ſeignory was forfeit to the king, that after this forfeiture ſhe ſhould hold of the king, and not of the heire whiche was in the reuerſion, in which caſe then ſhee cannot marry without licence, as me thinketh. Thẽ further it is to be ſene to what lands the ſtatut doth extend vnto, and to what not. It extends to lands holden in *Capite*, wherof any woman claymeth dower, as may appeare by the words of the ſame ſtatute, and not to any other lands, for if the king haue in his cuſtody biſhops temporalties duringe the time the See is vacant, & one that holdeth of thoſe tẽporalties by knightes ſeruice dieth, his heire being within age, wherby the king hath the wardſhip of his heir, & endoweth his wife, in this caſe ſhe ſhal make no oth, but may marry without licence. Like law is it where ſhe is endowed of lands that are holden of him that is ỹ kings highneſſe warde by reaſon of a tenure in capite, for in both theſe caſes the land wherof dower is demaunded, are not holden of the king in chiefe, & this dothe appeare in the new *Natura breuium fo.264.a.* and yet in both thoſe caſes ſhe is endowed in the chancery, but

what is that to the purpose? for so shal the heir in those cases sue liuery of those landes, & yet they be neuer the more for ỹ holden in chief, but only vsed for a solemnity, because they were in the kings hands once by office, which is matter of recorde. The wordes of the statute be further: *Et si se maritauerint sine licentia Regis, tunc rex capiet in manum suã nomine districtionis omnes terras & tenementa quæ de eo tenent in dotẽ &c.* These wordes be knit in a copulatiue to the former wordes contained within this chapter, that is to saye, where she hath demanded dower, & is sworn not to marry but if shee wil neuer demaund dower of the landes holden in capite, shee may marry where shee wil: for the wordes of the statut be: *Quòd assignabit viduis dotem, si viduæ illæ voluerint:* and so thinkes Iustice *Fitzherbert* in his *Natura breuiũ f.*175. Howbeit by the booke in 40.li.ass.36. it appereth that the wife neuer demaunded dower, & yet had allowance of it, & did marry also wout licence, & yet paied no fine, and therefore the case was: The kings tenant in taile in chief made a feffement by licence, & tooke estate again to him & to his wife & died, the wife takes an other husbande & dies, after whose death the auncient estate taile being found by office, the licence was holden void, because the kinge was deceiued therein, & the second baron driuen to answer for the meane profits of two parts of the land, but not for the third part, because shee was endowable, *quod nota.* A woman tenant in dower of no mans assignmẽt, & some there thought she should forfeit her dower, because she was party to the deceit. Howebeit this case seemeth not to be properly within the compasse of this statute. Also *Fitzherbert* in the saide *Natura breuium fo.*174. thinketh, that where the king hath vsed to graunt to other the marriage of his wydowes, that a cõposition with ỹ grauntee made for ỹ same (whether it be made by the wife or ỹ husbande) is as good as if it were made with the king, yet cannot ỹ grantee in such case cõpell her to marry, for ỹ should be cõtrary to the

statute

ſtatut of *Magna charta ca.* 7. which will that ſhee ſhal not be conſtrained to marry by diſtreſſe, but if ſhee will ſhee may liue ſole. Howbeit at this day by the ſtatut of 32. H. 8. ca. 46 the cõpoſition is geeuen to the maiſter of the kings wards & liueries with iij. of ẏ counſel of the ſaide court. And likewiſe authority is geuen to them wher the kings widowes marry thẽ ſelues without licence to taxe a reaſonable fine by their diſcretions according to the ſtatut of *Prerog. Regis*, which ſtatut plainly ſetteth forthe what hathe bene vſed to be don in ſuch caſes, ẏ is to ſay, the value of her dower by one yere, & therwith agrees the new *Natura breuium fo.* 174. And for that fine the King ſhal ſeaſe all the landes & tenements ſo holden in dower, as it apperes by the letter of the ſtatut. Howbeit the *Regiſter* geueth that the king may ſeaſe aſwel the land of the huſband as of the wife, becauſe ẏ mariage is a wrong don to the King, but the ſtatut is cõtrary to that, and therefore *Fitzherbert* in the ſaid *Natura breuium fo.* 174. thinkes it to be no law: For as wel might ẏ lands that the woman hathe of her inheritaunce bee then ſeiſed, wherefore no other land ought to be ſeiſed, then that ſhee holdeth in dower, as it appeares in the ſaid *Natura breuiũ f.*265.*c.* And learn whether the womã obtaining dower at the hands of the cõmittee, or of the heir of lands holden in capite, without making any othe, may marry or not, wõut licence, & as me ſeemeth ſhee cannot, for as ſoone as ſhe is endowed of thoſe lands, ſhee is the kings tenant, & not tenant to the heir which is in the reuerſiõ: for if a treſpas be don vpon ẏ land, ſhe ſhal haue a writ out of ẏ chancery, ẏ one ſuch hath entred vpõ the kings poſſeſſion, & the auowry to be made by the king reſteth only vpon her, & ſo is the opinion of *Wood* in P. 1. H. 7. f. 17. And yet the reuerſion is in the heire only, for if ſhee do waſt, the heire ſhal puniſhe her for it, & not the Kinge. Then further let vs ſee of what force this dower is, whẽ it is made in the chancery, & how ſhe ſhalbe admeſured in the ſame, if it be too great, for if it be to litle, ther is no remedy for her but to ſtãd to her own

harms if she in the chancery once did accept it, not forcing whether she were then within age, or of ful age, as it may appere in T.18.E.3.f.29. The dowmēt in ỹ chauncery is of this force, ỹ whether it be by right or by wrong, it cannot be defeated by way of plee wout a sute made in the chauncery for ỹ defeting therof, as it appereth in M.17. E.3.f.71. & *Dower* 128. M.31. E.3. And therefore in a very strong case one dothe trauerse the office which is in the chauncery by reason the land is holden of him by knights seruice, & not of the king, and hath an *ouster le main vnà cũ exitibus*: yet if shee were endowed before in the chancery vpon the office, her dower remaineth vndefeted notwithstanding this trauerse and *ouster le main*, vntill an other sute be made in the chancery for the defeting of the same. Howbeit in this case if the dower be too muche, the lord that tendeth ỹ trauerse may haue a writ of *Admesurement* at the comon lawe, and so cause it to be admesured wout suing to the kinge for the same. For it is no losse to his highnes though she be admesured, seeing the land is not holden of him, as it appeareth *Admesurement* 4 T.7.R.2. and there it is agreed that ỹ heir shal haue a writ of *Admesurement* of assignment of dower made by his auncestor, *quere tamen*. But the abatour shall not haue a writ of *Admesurement*, nor *Garden en fait* of assignement made by *garden en droit*, nor if the heire were of ful age at the death of his ancestor, & died, his heire within age, the garden of his heire shal not haue a writ of *Admesurement*. But take the case to be, that a womā is endowed in the chancery, the rest of the land ther remaining stil in the kings hands, if it be surmised by the heire or any other for ỹ king, ỹ the land assigned to ỹ wife, is not extended to the very value, but ỹ it is more in value then it is extēded for, now vpon this surmise there shalbe a new extēt made which being returned into the chancery, a *Scire facias* shall be awarded against the womā, & if shee be warned, & come not, or appere & say nothing, shee shalbe newly endowed,

as it

as it is ſaid in *Natura breuium fo.265 b.* Then let vs ſee farther, at what time the woman maye aſke her dower in the chancery, & when ſhee is endowed & loſes her dower vpon a recouery had againſt her by an *eigne title*, how ſhe ſhalbe recõpenced. If the huſband haue lande in diuers counties whereby after his death there be awarded ſeueral writs of *Diem clauſit extremum* into euery of thoſe counties, ſhe ſhal not be endowed, vntil ſuch time as al the ſaid writs be returned again into the chancery, as it may appere in *Liuery* 29.H.16.E.3. And note ỹ when ſhee is endowed in ỹ chancery, & afterwards loſes by a recouery vpon an *Eigne title*, then ſhe hath none other remedy but to cauſe the record of the ſame recouery to be remoued into the chancery, & vpõ the firſt record, wherby it appeared ſhee had dower, & this other record of the recouery, ſhe ſhal haue a *Scire facias* reciting both ỹ record againſt the tenant of ỹ two partes to reſeiſe ỹ ſaid ỹ. parts into ỹ kings hands, & to be newly endowed of the ſame, but not to recouer any damages, notwſtanding damages were recouered againſte her, & this appereth 43.li.aſſ.p.32. Now to the laſt branch of this ſtatut, which is, that women ỹ holde of the king in chiefe any inheritance, of what age ſo euer they be, ſhal likewiſe ſwere not to marry &c. By the order of the comon law before the making of this ſtatute all women ỹ were within age, & in ward, ſhould whẽ they came of ful age, be maried by their lords, euery one of them wth their portions, & if they wer of ful age at the death of their anceſtors, yet ſhould they neuertheles be in the lords keeping vntil thei were married by the aduiſe & diſpoſition of their Lordes. For as *Glanuil* in his 7.booke ca.12. that he wrote in the time of king H.2. ſaithe: *Sine dominorum diſpoſitione vel aſſenſu, nulla mulier hæres terræ maritari poteſt de iure vel conſuetudine regni:* and therfore ſaith he, if a mã haue iſſu, one or mo daughters which be his heirs apparant, & marieth any of them wout the aſſent of his lord, ỹ he therby forfeits his inheritance by the

lawe

lawe and custome of the realme, so that he shall neuer recouer it again but only through his lords mercy, and that for this cause: For whē the husband of such a woman shall doe his homage for the tenementes so holden by knightes seruice, it is requisite to haue the lords wil & assent, lest he be compelled to receiue homage of his mortall enimye, or some other vnable personage, neuertheless if the tenaunt sue to his lord for licence to marry his daughter, the lord is bound to consent, or els to shew cause why she should not, & if he will not, the woman may marry where shee listes, without his assent. And the said *Glanuill* further saith, that tenaunt in dower cannot in like wise marrye without the assent of him that is her warrant, that is to say, the heire: And if shee do, she shal lose her dower, & yet there the husband shal do no homage: but what then? he shal do fealty, & for that cause also she shal haue licence. And further saith if she hold of diuers lords, it is sufficiēt for her to haue the assent of the chiefe lord. And he saith, ỳ women beinge in ward, *Si de corporibus suis foris fecerint*: Which wordes as I vnderstand them, be, if they commit fornication, & that be proued, then they that offend shal be disherited, so that her portion then goes to ỳ other sisters ỳ haue not in the like offended. And if they al offend, then the lord shal haue the inheritance by way of eschete. Howbeit, saithe he, where they be once married by the lords assent, & after becōe widowes, they shalbe no more in ward, but yet if they marry again, thei must haue his assent for the reson before made. But then after they haue bene once married, they shal not forfeit their inheritance for their incōtinency, so that it apperes plainly here by *Glanuill*, ỳ this whole statut of Prerog. should be but a confirmation of the comon lawe. And ỳ the law was so as *Glanuill* tooke it, it may partly appere by the said statut of *Magna charta* ca. 7. For the wordes are not onely, *Quòd vidua securitatem faciet quòd se non maritabit sine assensu nostro, si de nobis tenuerit*, but are also

vel

vel sine assensu domini sui, si de alio tenuerit. And *Bracton* lib.1. agrees also with *Glanuill*. Howbeit, he saith, where a woman in the life of her auncestors marryes without the assent of the lorde, or where the widow marries without the assent of her warrant, that the inheritaunce or the dower shal not nowe be forfeited, although in olde time it was. And farther saith, that the heire in socage being a woman shalbe married by the lorde, like as shee should if she were heire of lands holden by knights seruice. And farther saith that ỹ heir male shalbe maried by the lord more then once that is to say, as often as he shal become vnmarried in the time ỹ he is vnder the age of 21. yeares. But now by ỹ statute of W.1. ca.22. the lords are abridged of their power in these mariages of the heirs females, for if they now be w̄in the age of 14. yeares at the death of their ancestor, & the lorde doth not marry them before they come to 16. yeares, then shal they recouer their heritage without any thinge geuen either for the warde or for the mariage. And if they malitiously, or through euil counsel refuse to mary where their lords do appoint them without disparagement, then shal their lord hold their land vntil they come to the age of 21. yeares & longer, vntill they haue taken the value of the mariage. Out of this statut (if it be wel considered) a man may gather that the comon lawe was no lesse then is here recited. And this statut was made about the third yeare of King E.1. a litle before that *Britton* beganne to write hys booke: for *Britton fo.*169. saies, that the marriages should be offered to the heirs females before they accōplish ỹ age of 14. yeares, and if not, the lord shal lose his right in the saide mariages. I suppose that the printer mistoke the number of the yeares, & shoulde haue printed sirtene, where is but fourtene, & therefore it is good to see other copies, for this matter. And *Britton* also saithe, that if he or shee haue bene once married by the lorde, or in the life of their father, or

once

once agreed with their lord for their mariage, they shal neuer again be maryed by him, but may mary them selues where they list, so that they hold nothing of the king. And fo.168. he saith, ỳ the king shall haue the mariage of all the heirs females where they hold of the king, of what age soeuer they be, as often as they shall be to marrye, so ỳ they cannot marry without the kings licence. Thus is the last clause of this chapter expressely proued by *Britton*, that the comon law did stil remain as it was for the mariage of the heires females in the kings case, and not altered or abridged by the said estatute of West. primer, and therfore was the statut in the 39. yeare of king Henry 6. the last chapter made in this wise: *Item de auisamento, assensu, & authoritate prædictis ordinatum est & stabilitum, quòd mulieres existentes quatuordecim annorum tempore mortis antecessorum suorum absque questione seu difficultate habeant liberationem terrarum & tenementorum suorum sibi descensorum, quia sic lex istius terræ vult quòd ipsę haberent.* Howbe it, this statute prouides not where they be within the age of fourtene yeares at the deathe of theire aunceſtour, *ideo quere*. For as our late bookes goe since *Brittons* time the kinge hathe losse his prerogatiue, vppon what occasion, I knowe not, but I woulde gladly learne, for *Fortescue* sayes H.35. H.6. fol.52. that when the heire female sues her liuerye, shee takes no othe that shee shal not marry, as the kings widowe dothe, and therefore, saith he, it shoulde seeme shee shoulde make no fine, if shee marrye without licence. Howbeit *Littleton* saies, that if the heire female be of the age of 15. yeares at the death of her aunceſtor, and marry her selfe without licence, that shee shall make a fyne, for it amounteth to an alienation. For after issue had, the husband is become the kinges tenaunt, and he soly shall doe homage in his owne name. And yet afterwards M.15.E.4.f.13. the same *Littleton* saies, ỳ the latter clause of the same statut is voyd, for the

daughter

daughter which is in ward marrying her selfe to an other without licence shal not make fyne to the kinge. Thus by the argument of the said booke of 35. H.6. it appeares that they take the king to be bounde by the said statute of Wi.1. and make him no better then a common person, whereat I haue no little maruaile since he is not named in the said statute. For in the said booke H.35. H.6. *Gard.P.71.* it is agreed by the court, that if the king after the age of 14. yeares, and before 16. do marry the heire female, she shal haue liberty forthwith vpon the marriage, although shee then be not of the age of 16. yeares, because that shee was of full age before, as it is there said, that is to say, as soone as she was 14. And the y. yeres ouer is but onely geuen for the marriage, whiche when it is once had, and the 14. yeares past, the Kinge or Lorde leese their interest. And so it was graunted, that if shee were married before the age of 14. and after her husband dies before the said age, when shee comes to the said age of 14. shee shal haue liuery. And there it was also saide, that these two yeares were geuen to the Lord to tender her marriage in, for the tender before was void, because it was within the age of 14. yeares. But note that if the heire female beinge vnder the age of 14. yeares, falleth into the kings handes as ward, because of certaine lands that her father held of the king in chiefe, & by reason therof the king hath also the lands in ward which are holden of other in socage, in this case when shee comes to the age of 14. yeares, & is vnmaried, she shal not haue liuery of these landes holden in socage, & yet by reason of the ỹ king hath not the marriage of her. But what then? shee cannot sue her liuerye by parcelles, and that is the cause that the whole lande shall tarry in the kinges handes, til a whole liuery maye be sued of them all. And this appeares in the newe *Natura breuium fol.* 256. And laste of all note, that this latter clause extendes not to women that clayme by purchase, but onely by descente. And therfore it appeares

Liuere

Liuere 31. *H.*15. *E.*3. that where it was founde vpon the *Diem clauſit*, that the wife was iointly infeoffed with her huſband, ſhee had an *Ouſter le main* without finding any ſuerty of her marriage. And note alſo, that by the comon lawe if one wil mary the kings nief, that is to ſay, his bond woman without licence, he ſhall pay a fine vnto the kinge, as appeares in 33. *E.*3. *Li. aſſ. Trauers* 36.

¶ *Le Roy auera homage de cheſcun parcener, & ſur partition cheſcun de eux auera part del terre tenus de roy. Cap.* 5.

ITem ſi vna hæreditas quæ de Rege tenetur in capite deſcendat pluribus participibus, tunc omnes illi hæredes facient homagium Regi, & illa hæreditas quæ de Rege tenetur, participabitur inter hæredes illos, ita quod quilibet eorum extunc partem ſuam tenebit de Rege.

This ſtatute is ſomme what declared by a ſtatute made longe time before, that is to ſaie, in the 14. yeare of kinge Henry the thirde, called *Statutum Hiberniæ de cohæredibus*, which for the better declaration of this prerogatiue I haue alſo here noted.

Henricus Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ & Normañ, comes Andigauiæ, dilecto & fideli ſuo Gerardo filio Mauriſci Iuſtitiario Hiberniæ ſalutem. Cum milites de partibus Hiberniæ nuper ad nos accedentes nobis oſtenderunt, quòd cum hæreditas deuoluta ſit inter ſorores in terra noſtra Hiberniæ, Iuſtitiarij noſtri in eiſdem partibus itinerantes incerti ſunt, vtrùm poſtnatæ ſorores tenere debeant de primogenita ſorore, & ei facere homagium, an non. Et quia prædicti milites petierunt certiorari qualiter in regno noſtro Angliæ in caſu conſimili hactenus vſitatum fuit ſic ad inſtantiam eorundem vobis ſignificamus, quòd in regno noſtro Angliæ talis eſt lex &

conſue-

consuetudo in hoc casu, quòd si quis de nobis tenuerit in capite, & habuerit filias hæredes ipso patre defuncto, antecessores nostri habuerunt, & nos semper habuimus, & cepimus homagium de omnibus huiusmodi filiabus, & singulæ earum tenerent de nobis in capite in hoc casu. Et si infra ætatem fuerint, nos habebimus custodiam earum, & maritagium singularum. Si autem de alio domino tenuerint, & ipsæ sorores infra ætatem fuerint, earum dominus habeat custodiam & maritagium singularum, & primogenita tantùm faciet homagium domino pro se & omnibus sororibus suis, & aliæ sorores cùm ad ætatem peruenerint facient seruitia dominis feodi per manus primogenitæ. Nec potest primogenita ea ratione vel occasione, à postnatis sororibus homagium uel custodiam, vel aliquam aliam subiectionem exigere vel habere. Quia cùm omnes sorores sint quasi vnus hæres de vna hæreditate, si primogenita posset habere homagium aliarum sororum, vel custodiam petere, tunc esset illa hæreditas diuisa, ita quòd primogenita soror esset simul & semel de vna hæreditate domina & hæres. Hæres autem suæ partis, & domina sororum suarum, quod quidem in isto casu fieri non possit, cùm ipsa primogenita nihil posset petere plus quàm aliæ sorores nisi capitale messuagium ratione eineciæ. Prætereà si primogenita huiusmodi homagium à postnatis sororibus suis acciperet, esset quasi domina earum, & habere posset custodiam earum, & filiorum suorum, & hoc esset quasi committere agnum lupo ad deuorandum. Et ideò vobis mandamus, quòd prædictas consuetudines quas in regno nostro Angliæ habemus in hoc casu, vt prædictum est, in terra nostra Hiberniæ proclamari ac firmiter teneri facias & obseruari. In cuius rei &c. Teste me ipso apud Westmonasterium nono die Februarij. Anno regni nostri decimo quarto.

Before the making of this statut called *Statutū Hibernię* **it appeareth by** *Glanuill Li. 7. ca. 3.* **which wrote in the tyme of kinge Henrye 2. that the husbande of the eldest daughter should do homage vnto the lorde for the whole inheritaunce, and that the other daughters or theire husbandes**

should

ſhould do their ſeruice for their tenements vnto the chiefe lord by the hands of her eldeſt ſiſter, or her huſbande, & yet they for the ſame ſhoulde not be bounde to do any homage or fealty to the eldeſt ſiſter or her huſband during their liues, ne yet the heirs that come of them in the firſt degre or ſecond degree. But the heirs in the third degree by ẏ lawe of the land wer boũd to do homage, & to pay relief for their tenements vnto the heire of the eldeſt daughter, *quod nota*. And the reaſon of it after the minde of *Bracton Lib.1. de hoñ capiend'*, which agreeth with *Glanuill* in this, that when iſſue deſcendeth of them to the thirde or fourth degree, it is not like that iſſue ſhould faile of their bodies, & then maye ẏ heirs of the eldeſt daughter take homage very wel, for it is vnlikely ẏ the eldeſt daughter or her heirs ſhold thẽ haue the ſame by deſcent, for theſe be his wordes: *Quia cum ſint hæredes tres de hærede in hæredem extunc vix poterint deficere, & ideo tunc ſequitur homagium abſque damno & periculo donatoris.* For if there were likelihood of the deſcent, in this caſe the taking of homage ſhoulde be rather hurtfull, then beneficial: For by ẏ ancient lawe if one had infeffed an other to hold of him, & had take his homage, he could neuer be his heir afterwardes, but the next vnder ẏ feoffor & his heirs of ẏ kinred ſhould rather haue it. As put caſe before the ſtatut of *Quia emptores*, the eldeſt ſonne had infeoffed ẏ middlemoſt to hold of him, & had taken his homage, ẏ middlemoſt dieth wtout iſſue, ẏ yongeſt ſhold haue had ẏ land, & not ẏ eldeſt, becauſe of ẏ homage ẏ he tooke: howebeit if there were no yonger ſonne or any other heir, thẽ ẏ feffor might claim the land again by eſchete, & not otherwiſe: for as long as there were any, the feffor or his heirs of whom the lands were ſo holden, might not haue it. And that *Bracton* ſheweth alſo in his firſte booke in the title *de maritagijs reuerſis ad donatorẽ pro defectu hæredis.* For he hath this texte or ſayinge there, *quod homagium expellit dominicum, & retinebit*

retinebit seruicium et quod non potest quis esse dominus & heres: so that you may nowe perceiue that this statute of Irelād agreeth with *Glanuill*, sauyng that *Glanuil* dilateth or declares the common lawe farther then this statute doth. Also *Bracton* lib.1. saith further in his title of Homage that if the eldest daughter in this case will preuent the tyme & take homage before she needeth, she by ẏ leseth ẏ benefite of the discent, & saieth ẏ the reason why the seruyce oughte to be done by the eldest for themsal, is, because ẏ lord shall not be driuen to take his seruice by parcel mele, & further saith ẏ although the eldest maye not haue homage of her sisters forthwith but must tarye a tyme, yet shal they out of hand do fealtie vnto her, & all the other seruices ẏ are to be done, & the eldest shal do them ouer, which is cōtrary to *Glanuil*, for he saith the other sisters shall doo neyther homage nor fealty. Howbeit *Britton* f.175. agreeth wᵗ *Bracton*, & there setteth foorth the maner of the fealtie by ẏ yonger sisters to be don to the elder & saith ẏ it is at the election of the lord whether he wil take homage & the other seruyces by the handes of the eldest only for them all, or else of euery sister seuerally for her seruyce, for if he might not so do, the lord in proces of time might happelye lese ẏ wardship of the heires of the other sisters, because of the words in the writt of ward, which are, ẏ the auncestours dyed in his homage, & ẏ would be harde to trye when the homage was euer don vnto him only by ẏ elder sister. And *Bracton* in his said title of homage sayeth, *Cum quelibet soror de facto acapitauerit dño capitali hoc reuocari non poterit a primogen̄ vel eius marito sed semper qd factum est tenebit quia capitalis dns qd ei oblat' est non recusabit sed siue tenuerint de dño Rege siue de alio cum homagium factum fuerit siue ante tertium hered. siue post statim sequentur releuium & alia seruic.* & a litle before that saith, *si plures sorores de domino rege tenuerint in capite tunc primogenit̄ missa omnes acapitabunt et homagium facient domino*

Regi, and therwith agreeth *Britton.fo.*171. And yet fol.168. saieth that theldest onely shall do homage vnto the kynge for her self & her sisters. Thus haue you now therposicio of the said statut of Ireland by the old writers, by whyche said statut & the said writers it appeareth ỹ this statute of Prerogatiue is but a confirmation of the common law, & doth only set forth & declare what the kinges prerogatiue is whē lāds holden in chiefe discende to two coparceners. For in this the king hath a prerogatiue aboue a common pson, aswel for ỹ they shall seuerally holde of his highnes, as for that ỹ his highnesse shal make the particiō, for whether they be of full age at the death of their aūcestor or wō in age, or some of them of ful age & some of them wōin age none of them that be of ful age shal haue any liuery but wō a particion, & that for the kings benefit: because that vpon the particion euery one of them shall haue for his porcion some parte of the lands ỹ are holden of the king in Capite. For if some should haue for their porcion only ỹ lands holden of other, then the king should lose his Prerogatiue in those landes hereafter for euer, because that they that haue them when they shall dye, hold nothing of the kinge in capite, & so might the king be diminished of his aūcyent rights of the crown, which were against all natural equitie. Wherfore the law was euer they should all hold of the king. And that appeareth by the writs of liuery, in which writes there is a prouiso that euery one of them shal haue in her purparte parcel of the lands that are holden of the king in Capite, as you may see in the new *Natura breuium* 259 e. And this liuery must be sued wyth a particiō or else it is misused, & it cannot be sued forth vntill such tyme as al ỹ writs of *Diem clausit extremum* are come into ỹ Chaūcery & returned, as apeareth *Liuery* 29.H.16.E.3. And then if al the copceners be found of full age, thē a writ shal go out of the Chauncerie to ỹ shirif to extend ỹ lands, & after

the

the extent returned, a writ shall go to therchetor to make partition & liuery according to the extent therof made as appeareth in the newe *Natura breuium* fo.259. But if one of the coperceners be within age and in the kinges warde, then the partition may be made in the Chauncery, & then to haue a writ of liuerie to therchetor of her parte, or else it may be wholly done in the country by therchetour like as they had bene both of full age, that is to say, shee of ful age being there present in her owne person, and shee that is within age only by *Prochein amye*, as it appeareth in the said *Natura breuium fo.*261. Which writte shalbe returned with the partition and afterwardes enrolled in the Chaū cery. And it should seeme that if after the writte of extent returned she that is of full age do praye a writ of liuery with a partition, that shee shall then neuer after haue a reerent if so be that before it were so highlye extended. Like lawe is it if the partition bee not egall, and shee not withstanding wil accept it. But in all those cases she that was within age if shee haue too lytle for her porcion, shee may haue a writ of *Participatione facienda* against her other copercener or a *scire facias* in the Chauncerye vppon the recorde of Partition that is there, to shewe why newe partition or extent shall not be made. By whiche writ if they be warned and come not, or come and say nothyng, the land shalbe reseised into the kings hands, and a newe extent made in the presence of the parties, which if it bee not extended as it shoulde be, they may pray a reextent before partition made: for after partition the prayer cōmeth to late. And this maye ye see in the newe *Natura breuium fo.*62.h. & in H.2.E.3.20.& *Liuere* 6.13.E.1. but learne whether shee may defete the partition by entre wythout swynge any suche writtes or no, because the other are in by matter of recorde, ý is to saye by liuery, wherunto shee is also after a maner pty. So is it not like ý case of a strāger

for a straunger that hath *eigne title* may enter vppon them after Liuerie notwithstandinge they haue the possession by matter of record. And it is said by *Hill*, T.17.E.3.f.37. that aduowson assigned in Purpartie may bee defeted by putting debate vpon the presentment without any other proces: And note that sometimes the king is to take a detriment by the liuerie wᵗ the partition: As take the case to be where some of them be within age & in the kings warde, & some of full age, & their auncestour dyeth seised not only of landes holden in chiefe but also of landes holden of other lordes, they of full age haue liuery with a partition, nowe the king loses the wardshippe of as much of ẏ landz that are holden of other as they haue liuery of, and yet if no partition had bene made the kyng should haue had the wardship of the whole till the heire had come of full age, as *Mombray* affirmeth M.21.E.3.f.3. And note also that of thinges entier the king shal haue by nonage of one of thē the whole, and the other that be of full age gett no parte of it ne yet liuery therof ne partition: as take the case to be this: A maner holden of the king in chiefe whereunto aduowson is appendant discende vnto three coparceners & one of them is wᵗin age & in the kinges warde, the other two that be of full age may sue theire liuerie for the land with a partition, but not for the aduowson: For that shall wholly remaine to the kyng duringe the minoritie of her that is in warde. And this appeareth *Quare impedit* 1.T.31 E.3.M 38.H.6.9.M.21.E.3.f.32. And note that if vppon partition made therchetour returneth ẏ some haue their partes deliuered thē & some not, because they sued not to hym for it, they ẏ did not sue, may at all times in ẏ chauncerye sue out a writ vnto therchetor to haue the same deliuered vnto thē, in which writ there shalbe enclosed a transcripte of ẏ partition, as it apeareth in ẏ said new *Natura breuium* fol.262. and there it appeareth also fo.263. that liuery with a par-

a partition was sued for lands holden in burgage: but by lykelyhood it was no common burgage: For as it appeareth the heire did his homage for the said lands. And note also that if the coparcener of full age take the parte of her sister whiche is in the kings warde by lease or graunt of the king *Durante minore etate*, by this she suspends the partition. For notwithstanding shee haue the one moitie deliuered her with the profits of the other moitie, yet when her sister commeth to full age, both they shal sue a new liuery with a partition, as appeareth in the said newe *Natura breuium fol.262.c.*

Le roy auera garde de heire marrie per son pier deins lage de consent. Cap.vi.

SI mulier ante mortem anteceſſoris ſui qui de rege tenet in capite ante annos nubiles maritat' fuerit tunc rex habebit cuſtodiã corporis illius mulieris vſque ad etatem quod conſentire poterit. Et tunc elegat ipſa vtrum maluerit habere virum illum cui prematritat' fuerit vel alium quem rex ei obtulerit. Nullus qui de rege tenet in capite per ſeruicium militare poteſt alienare maiorem patrem terrarum ſuarum ita quod reſiduum non ſufficiat ad faciendum ſeruicium ſuum, ſine licentia Regis, ſed hoc non conſueuit intelligi de membris & particulis earundem terrarum.

This chapter containeth two matters being diuers in nature, and therefore I entende to seuer and deuyde the one from the other, and to adioyne the latter braunche hereof to the chapter folowing because they intreate both of one thing.

This statute is but a confirmation of the common law. For it is written in *Garde.147.13.H.3.* in this wyse.

Thomas ſummonitus eſt ad reſpondendum regi quare abduxit Helenam filiam & heredem E.&c.T.dicit quod ipſe per aſſenſum

E.in vita ipsius E. desponsauit predictam Helenam in facie ecclesie &c.et quia predicta Helena est infra etatem & cum ad etatem peruenerit potest consentire matrimonio vel dissentire, ideo remanet predicta Helena in custodia domini Regis vsque ad etatem vt consentiat vel dissentiat &c. Yeare it is not set foorth nor expressed what is thage in a woman to consent to matrimony,and that is all that is to bee sought vppon thys statute:for *Bracton* in his firste booke in the latter ende of a chapter whiche hath this paragrafe.s.*De minoribus qui debent esse sub tutela & cura dominorum vel parentum* saith *quod femina septimo anno etatis sue potest consentire matrimonio,& virum sustinere anno duodecimo*,for he sayeth, *quod femina maius est capax doli quam masculus et quod maturiora sunt vota mulieris quam viri:* So that by him it appeareth that a woman may consent to matrimony after shee is vij. yeres of age. And so I iudge the lawe was at that tyme taken.

For it appeareth in *Garde* fo.138.12.E.1. that a manne that helde by knightes seruice maried his heire apparaunt beyng vnder age and dyed,the lorde claimed the wardshipp of the body and an issue was tended agaynste him, that at the tyme of the saide mariage the infaunt was of thage of seuen yeres,and this issue was receiued by the court for a good issue to barre the lorde of the wardship of the body *quod nota.* Howbeit it appeares not by the said booke whether the heire were male or female and *Wangforde* sayes H.35.H.6.fo.41 that when a woman is vij. yeares of age her auncester may then gather ayde to mary her, whyche saying argueth as me seemeth that shee is marygeable. And also this seemes to make with *Bracton*. Howbeit the law is not so taken in these dayes. For shee cannot nowe consent to matrimonye before the age of twelue yeares. This statute speakes onelye of the heire female, and yet *Cheiny* sayeth in M 7.H.6.fo.10.that the heire male shalbee taken wythin the compasse of the statute by an enquyrye, because

because the statute is beneficiall: And so it should appeare *Garde* 156.30 E.1.& 128 tẽps E.1. where the sonne was maried in the lyfe of his aunceſter then beeing no moze then of thage of v. yeres, and when the chylde came to thage of xij. yeres thanceſter dyed & the court adiudged in this caſe ẏ the lozd ſhould haue the wardſhip of the body, to thentẽt ẏ if the enfant hereafter ere he paſſe thage of 14 yeres diſagree to the firſt mariage, the lozde maye haue the maryage of him: And ſo it may appeare by this booke ẏ this ſtatute is but a confirmation of the common law, foz euery lozd ſhal haue like aduantage in this caſe as the king ſhal haue, and therewith agrees *Paſton* M.7.H.6.fo.11. addinge further to this that by the ozder of the common lawe beefoze this ſtatute of Pzerogatiue, if the heire woulde haue ſtand to the firſt mariage when he oz ſhe came to the yerez of conſent, they ſhould haue payd the double value: and by this ſtatute they paye nothing, and therefoze the caſe was there: The kings tenant in chief hauing a ſonne and heir of thage of 14. yeres doth mary him and dyeth, the kynge offers the child mariage at the age of 14. yeres which hee refuſeth, and holds him ſelf to the firſt mariage, & aiudged that thenfant might ſo do, and that foz the ſame he ſhould neuer pay the double value ne ſingle of hys maryage, and there *Babthorp* ſaieth that if the woman had dyed the heire being within the age of conſent, the kyng ſhould haue had the mariage of the childe, notwithſtandinge that hee was once maried in the lyfe of his aunceſter, foz it was no mariage, but at pleaſure: and therwith agrees *Britton* fo.196. Yea although the wife had dyed after the yeres of conſent and befoze the childe had come to thage of xxi. yeres, *quere* of this matter foz I am enfozmed that the law is not take at this day as the ſaide booke is in 7, H.6

Le roye auera fine pur alienacion ſon tenaunt ſauns licence. Cap. vii.

DE Serieantiis alienatis ſine licencia regis conſueuit rex arre-tare huiuſmodi ſerieantias per rationabilem extentam inde faciendam.

It appeareth by *Glanuil* in the beginninge of his ſeuenth booke ca.1.fo.44 that euery free man hauing lande whether he had an heir apparant then lyuing or not, or whether the ſaid heire apparaunt woulde conſent to it or not, yet might he geue ſome reaſonable porcion of his land w̄ his daughter or any other woman in mariage, or to anye man that had done him ſeruice, or in almes to any religious houſe, or to any other whome he would, ſo the ſaid gift were made in his health, for in extremitie of ſickneſſe hee might not be ſuffered ſo to do, leaſt it ſhould be thought to be done rather of a rage & fury of ẏ mynd, which through ſickneſs for the moſt part cōmeth to men, then of any good diſcretion & ſo might he in his gift excede meaſure. Howbe it ſuch a gift in ſickenes was euer good w̄ the conſent of the heire or with his confirmation. Againe if he hadde many ſonnes, he could not w̄out the conſent of his heire apparant geue any porcion of his enheritance to any of ẏ yōger ſōnes, for ſo might he diſherit theldeſt through affec cion ẏ ẏ fathers lightly bear towards their yonger ſonne more ther towardes thelder. But of his purchaſed lands hee might geeue the younger a porcion whether th eldeſt would or not. And if he had none iſſue he myght geeue away all his purchaſed landes. But of the landes of his inheritance he might geeue away no more but a reaſonable porcion. And if the lands were departible amongſt ẏ heirs males, then might the father in his lyfe tyme geue euery childe what porcion he would, ſo it exceded not the porciō that ſhould diſcend vnto him. And in that caſe whether the gift were of landes purchaſed or of inheritaunce, it made no matter. Howbeit neyther Abbot nor byſhop myght in any of theſe caſes geue any porcion of their landes away,

with

without the kings assent or his confirmatiõ, because their baronies be of the almes of the king or of his progenitors. Hitherto haue ye harde what *Glanuil* hath saide. After this was the statute of *magna charta* made, where in the 32 chapter therof it is written, *Nullus liber homo det de cetero amplius de terra sua, vel vendat de cetero, quã vt de residuo terre sue possit sufficienter fieri dño feodi seruicium ei debitum quod pertinet ad feodum illud.* Which statute is but a confirmatiõ of the comon law, as it doth appeare by that that is writen in *Glanuil*, for so one that had helde by knightes seruyce if he might haue ben suffred to alien the greatest part of his lande hee woulde haue aliened the same peraduenture to holde of him but in Socage or by some small rent, & then hauing so litle a liuelod left to him selfe, how had he been then able to haue done the seruice of a knyght or a man of warre, or what should his lorde haue had in warde to haue found one to haue done ý seruice, surely litle or nothyng. Wherby the strength of the realme might haue much decayed: therfore it was a reasonable law to restrain him as mee seemeth. Howbeit *Bracton* in his first booke vnder the title. *Si ille cui datum est rem datam vlterius alteri dare possit* disputes this matter after a sort, that is to saye, whether ý tenant may enfeffe another against the lords will or not, & he there affirmes he may, yea & that to holde of hym by what seruice he will, & calleth it *Damnum absque iniuria*, seeing ý though the wardshipp bee not so good after alienacion to the chief lord as it was before, yet the relefe is as good in euery point, & then if the lord bee serued eyther of the wardship or relefe, he hath al ý knightes seruice requireth. Howbeit saith he when the tenaunt is so disposed to sell his land, the lord shalbe preferred to the sale therof before a stranger geuing as much as another will. It seemeth by *Bracton* that it was very doubtful notwithstãding the statut of *magna charta* whether ý kinges tenant might

alien

alien his whole tenaunc̄y or not. And therefore was the statut of *Quia emptores terrarum* made, where it is prouided ẏ from thencefoꝛth which is in the 18. yeare of king E.1. & after *Bractons* time, it shoulde be lawfull foꝛ euery free man to sell his lands oꝛ tenements oꝛ any part thereof at his pleasure to hold of the chief loꝛd by the same seruice ẏ the feffoꝛ held. Prouided allwaies ẏ by any such sales there comes no landes to moꝛtmain. This statute remedies the mischief that was foūd in the wardship, but not the other mischief ẏ is to say touching the defence of the realm. Foꝛ when one mans liuinge is so dismembꝛed neuer a one of them is able to do the seruice of a man foꝛ want of liuelod Yea & much moꝛe vnabler since this statute, then befoꝛe. Foꝛ beforꝛe where he gaue it to holde of himself, he reserued somewhat in place of the land ẏ went frō him, where as now he can reserue nothing of cōmon right. Yowbeit notwithstanding ẏ this statut of *Quia emptores terrarū*, made it lawfull foꝛ all other mens tenants, yet was it not lawful by the said statut foꝛ the kinges tenants so to doe, that is to say, neither to alien the whole, noꝛ any parcel therof wout the kings lycence. And ẏ appeareth by *Britton*. f.83. Which speakes generally ẏ the kings tenaunts in chiefe cannot dismēber his fees wout his lycence. And because ẏ beforꝛe the time of king Ed.1. they might haue aliened wout lycence to hold of themselfes, as other mens tenantes might haue done in the like case, & thinking it moꝛe lawfull foꝛ them so to do after the making the saide statute of *Quia emptores* then beforꝛe, it was thought good to pꝛouide some stay foꝛ ẏ same by this statut of *Prerogatiue*. And yet by the woꝛds of the other chapter folowing it appeareth ẏ the kings tenant by graund sericantie, could neuer haue aliened any lands holden by graund serieantie wout the kinges licence. Foꝛ ẏ was so high a seruice, as *Bracton* in his first booke in the title *de magnis seriantiis* names it *Regale*

gale seruicium, & saith it was first inuented w̄in this realm in the time of the conquest, ẏ they could not dismēber any parte therof without the kings licence. For he saith in another place in ẏ said booke amōgest his writs of particiō *Quod seriantia diuidi non debet ne cogatur Rex accipere seruiciū suum ꝑ particulas*. Howbeit since the making of this statut of Prerogatiue, sundry opinions haue risen in these matters as may appeare by the statute made in ẏ yere of kyng E.3.ca.12. Which saith in this maner. *Item pur ceo q̄ plusours gents du realme soy pleynont deste greues de ceo q̄ terres & teñts q̄ sont tenus en chiefe du roy, et aliens sauns son conge ount este pris auant ceux heures en maines le roy et tenus come forfeits, le roy ne les teigne my come forfeits en tiel case, mes voet et graunt q̄ desormes de tiels terres & teñts aliens soit resonable fyne pris en le chācerie ꝑ due proces*. So ẏ by this statute it appeareth they toke the lands to be forfeited ẏ were holden of the king in chief & aliened w̄out his licence. And so it appeareth by a booke in T. 9. E.3. fo.26. and *Quare impedit*. 54. P.14 E.3. where *VVilby* saith ẏ at this day landes holden by graund seriātie & aliened without lycence be forfeted. For the seruyce of one mans body cannot be changed into another mans body without the kings assent. Also in the said first yeare of king E.3. the 13. chap. It is ꝓuided in this wyse. *Et auxi come plusors gents du people soy pleynount deste greues ꝑ purchase de terres & teñts q̄ ont este tenus des auncestors le roy que ore est cōe des honours, et mesmes tiels teñts ount este prises en le maine le roy, auxi si come ils eussent este tenus du roy en chiefe come de sa corone, le roy voet q̄ mes ne soit hōe encheson pur nul tiel purchase*. By this statute it apeareth ẏ if a man hold of the king as of any honor which is come to his highnes by discent frō any of his auncestours, that by reason thereof he shoulde not hold in *Capite*: For that was contrary to the law, as it may appere by the words of the statut, whiche sayth that the people complained them selues to be greeued hereby,

which

Which is to be vnderstanded vninstly greued, for by the wordes in the first chapter of *Prerogatiua regis* it apeareth that if it shalbe saide a tenure in *Capite*, it must be holden of the crowne of a long time. s. *ab antiquo de Corona*. And that is not when it is but newly come: and the Statute of *Magna carta ca.*3. did helpe this matter by expresse words, If suche an honour came to the crowne by way of eschete, but not if it came by way of discent or any other waye.
And that statute doth sett forth certein honours by name whyche bee not of the auncientnesse of the Crowne, that is to say the honour of Wallingforde, Notyngham, Bolingbroke and Lancaster. Therefore hee that holdeth of the king as of these honours, holdeth not of the kynge in chiefe. But other honours there be which of so long tyme haue beene annexed to the crowne that to holde of them is to holde in chiefe, as it appeareth in the newe *Natura breuium. fo.*256. a. & b. Where one helde of the kynge as of a certein honour to yelde a certein rent to the keeping of a castell of Douer, this was there taken to bee a tenure in chiefe. And so it was where one helde of his highnesse as of the honour of the Abbey of Marle. Therfore learn what honours be of the auncientnesse of the crowne: and what not. And there is another statute made in the 34. yeare of the saide kyng the 15. chapiter, whych saith in this wyse.
Item accorde est, et establie que alienation de les terres & tenements faites per gents que teignont du roy Henry besaiel au roye que ore est ou des auters royes deuaunt luy, a tener de eux mesmes, que les alienations estoient en lour force. Saluant toutes foites a nostre seignionr le roy sa prerogatiue de temps son ayel son piere & son temps demesne. This latter statute doth argue that the king ought to haue prerogatiue since the tyme of king Edward the first, & none before. And surely so was ỳ law takẽ, as it appeareth M. 20. E. 3 *Assise* 122. & 124. & 26 li. ass. p. 140. & therfore to thintẽt these alienatiõ made in king H

the

before should not now be brought in question, this statut was made so that his grace should haue fyne for al alienacions without lycence made since king Edward the firste tyme, but not for any made before. And this shoulde bee the meaning of this statute, whiche (vnder correction) is mistaken by maister *Fitzherbert* in his *Natura breuium* for 235. Howbeit for myne owne opinion I doe not see by all these statutes but that the king hath his Prerogatiue by thorder of the comon law, at lest wise as the common law hath ben taken since the time of king Edward the first, or else hee coulde not haue it now, for any thing ẏ I see puided for him by these statutes. For this statut of Prerogatiue goeth but to that where his tenant in chief alieneth ẏ greatest parte wout lycence, *Ergo*, he may alien the lesser parte without lycence, and so doth the statut expressely set it foorth except you will saye there be two licences vnderstanded here, that is to saye a generall lycence by thorder of the common law, and a speciall lycence by this statute, thone to be requisite where any parcell is solde, thother when the more parcel is solde. Therfore enquire & learne what other mens opinions are vppon this statute. For I fynd no booke to proue it comon law before *Brittons* time, for *Glanuil* ne *Bracton* speaketh any thing of it. And where this statute of Prerogatiue speaketh only but of knyghts seruice, the law is otherwise taken. For if one do holde of the kinges highnes in Socage in chiefe hee can alien no pece wout licence. Then let vs see what things may bee graunted or done without licence and at what time: And how the tenaunts that hath lycence shall pursue the same The kinges tenaunt that holdeth of him in chiefe maye graunt a rent charge out of the same without lycence as it appeareth 40.lib.Ass.Pl.5.H.7.H.6.f.2. For ẏ king by ẏ shal sustain no detrimēt. For his highnes nede not to hold it charged except he wil. But if one hold an aduowson of ẏ king

king or a rent, & granteth ouer the same without licēce, ỹ grantee shall pay a fine. And that appereth 9.21. E.3. f.31. For there the case was that vpon liuery with a partition, an aduowson was allotted soly to one of the coparceners & after by cōposition betwene her & her fellows shee was agreed to leaue thaduowson again in common amongest them all & to present by tourne, & adiudged that this was an alienation, for the which she must make a fine: For before shee was tenant soly and now she is become tenaunt iointly again with her fellows. The lyke law is it if there be lord mesne and tenant, the kinge is the Lorde and the mesnaltie is holden of him in chiefe, if the mesne release to the tenaunt without lycence, he shall pay a fyne, as it appeareth 38.li.ass.p.17. & yet the release goeth there by waye of extinguishmēt, but what then: he holds now by ỹ seruice the mesne did, that is to say, in chiefe, & so therby the tenācy is altered. The selfe same law is it if two iointenantes bee, and thone release to thother wythout lycence, ỹ kinge shall seise for a fyne, as it appeareth 40.li.ass.p.5. 9.8. ỹ 4. fo 8. For the lyke reason that is made in the case of the coparceners before. But where there is nothig but a bare right released which goeth by way of extinguishement otherwise it is. For they of thercheker vpon a fyne sur release only vse to make out no proces to aunswer the king of an alienation. The kings tenant in chiefe maye make a lease for terme of yeres wythout lycence, but not a lease for terme of life, nor no higher interest, as appeareth 9. 45. E.3. f.6. & in ỹ new *Natura breuium fo.*175. The at what tyme or how he should pursue his licence: if the licence be granted by one king he cannot by vertue thereof alyen in the tyme of another king as it apeareth *Offic. de court* 29. 9 2. E.3. Like law if the lāds be in the kings hāds for *Primer seisin* or alienatiō wout lycence, at which time ỹ kig doth licēce his tenāt to make a feffemēt, he cānot make this feffe

ment

ment til the lands be out of the kings hands, as apeareth Ÿ.21.Ÿ.7.f.7.Also he that hath lycence may not vary frō it in any point: *Fines* 124.Ꝑ.18.Ē.2.As if the king lycence the Abbot & Couent to to make a feoffemēt, & thabbot sole will make it this is voide, as appeareth Ÿ 21.Ÿ.7.f.8. And there *Frowike* saide that if the king licence mee to make a feoffement by deede, I cannot make it without deede *Nec econtrario*. And herew̄ agreeth the book of Ÿ.3.Ē.3.5. wher the licēce was to leuie a fyne of the maner of Dale to find two chapleins & he woulde haue leuyed the fine leauynge out the chapleins & could not be suffred. And Ꝑ 30.Ē.3.17. the licence was to leuy a fyne of the manor of Dale yeldig a rent, & he would haue leuyed ẏ fine of ẏ manor w̄ a Forpriſe, that is to say, excepting certein acres parcell of the manor yelding the rent, & coulde not be receiued so to doo for that should not agree with the lycence, which would ẏ whole manor to be charged with the rent But if ther had bene no rent reserued it seemes hee mought haue aliened any part of ẏ manor by a lycence of alienatiō of the whole manor *Tamen quere*. For it should seeme to bee wythin the words of this statute whiche woulde you shoulde not dysmember the kings fees, & learne if the king licence his tenant to make a feoffemēt, whether he maye make it vppon condicion or not, for they vse when a condicionel feoffemēt is to be made to expresse the cōdiciō w̄in the lycence: & if ẏ condicion be to make an estate again to the feoffor, al this goeth vnder one fyne & in one lycence Ꝑ 33.Ÿ. 6.f.52. And note ẏ if the Iustices before whom the fine shalbe leuyed be enformed ẏ the lands are holdē of ẏ king & ẏ so appere to thē by any record, they wil not take ẏ fine till they haue seene the licence, nor yet engrosse it til they haue receiued a writte out of the Chauncerye called *Quod permittat finem illum leuari*, by which they may be fully certified of ẏ kingz pleasure, which writ appeareth in the new *Na.brc.f.*147.c.

And

and that they haue thus vsed it appeareth 4. E. the second *Fines* 115. But they neuer vsed to do vpō a recouery i these cōmen writes of entre in the post, because ẏ recouerer in such case should pay no fyne: for it was no alienaciō since the recouerer claimed not in by the tenant. But nowe by the statute made in the 32. yere of king Henry the 8. ca. 1. it is ordeined ẏ the recouerer in suche case shoulde paye a fyne for alienation. And note that if an alienatiō be made wōut lycence the pardon is moste commonlye made vnto the feoffee and not to ẏ feoffer. And so I suppose yt ought to be, because the wrong groweth by the entre of ẏ feoffee which hath entred the kings fee without hys lycence. And therefore the case is 14. H. 6. f. 26. that where the kīgs tenaunt aliened without lycence, and toke estate agayne to him and to hys wife in taile, the remainder ouer to his right heires and dyeth without issue, and the kinge pardoneth the wyfe all manner of alienations, thys was thought good to exclude the kynge of hys fyne that hee shoulde haue hadde for the saide alienation And it is further to bee noted that the lycence must bee purchased vpō a true suggestion or els it is voide. For if the kinges tenāt in tayle pretending to bee tenaunt in fee simple will purchase lycence to make a feoffement, this is a voyde lycēce as it appeareth 29. assise 30. & 40. lib. Ass. 36. And in all cases where the kynges tenaunt in chiefe will dismember his tenauncy, that is to saye alyen any parcell thereof wōut lycence, the kyng may distrayne for his whole rent in the parcel so aliened, but if he haue the kynges lycence to make suche alienation, the alienee shall haue a writ in ẏ Chauncery called *de deonerando pro rata porcione*, that he shal not further bee charged then after the quantitie of the porcion that hee holdeth. This writ you may see in the new *Natura breuium* fo. 235. A.

The

¶ *Le Roy auera ſon preſentment nient obſtant que Leueſque ad fait collation pour laps.*

DE eccleſijs vacantibus quarum aduocationes ſpectant ad regẽ, & alij preſentauerint ad eaſdem. Ita quod contentio inter dominũ regem & alios oriatur ſi rex per conſiderationem Curię preſentationẽ ſuam recuperauerit, licet poſt lapſum ſex menſium à tempore vacationis nullum currit ei tempus dum tamen rex preſentauerit infra tempus ſex menſium.

Of this chapter I finde nothing neither in *Glanuil*, *Bracton*, **nor** *Britton*, **ne in any other old writer before the making hereof, ſauing that I finde this texte bothe in** *Bracton* **and** *Britton*. *s. quòd nullum tempus occurrit Regi*, **whiche** *Bracton* **in the beginninge of his firſte booke vnder the title,** *Quæ res dari poſsit*, **applyeth vnto liberties appertayninge vnto the Crowne, ſayinge in this wiſe:** *Quòd ille qui huiuſmodi libertatem ſibi vendicat, doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate, defendere non poterit, quamuis pro ſe pretendit ſeiſinam longi temporis, diuturnitas enim longi temporis in hoc caſu non minuit iniuriam, ſed auget, nec in iſto caſu currit tempus contra Regem, nec incumbit ei probatio quòd ad ipſum pertinet, cùm conſtare debeat ſingulis, quòd huiuſmodi de iure gentium pertineant ad Coronam, ſed ſunt aliæ res quæ pertinent ad Coronam, quæ non ſunt ita ſacræ, quin transferri poſſunt, ſicut ſunt fundi, terræ, & tenementa, & huiuſmodi, per quæ Corona Regis roboratur, & in quibus currit tempus contra regem, ſicut contra quamlibet priuatã perſonam.* **Thus it appereth by** *Bractõ*, **that this texte dothe not ſerue the kinge in al caſes, for preſcription ſhall holde ſommetime againſte the kinge in ſuche thynges as a man maye preſcribe in, as it is common in our bookes, that one ſhal preſcribe for waiſe and ſtrayfe,**

and ſuch like againſt the kinge. And alſo it appearethe in the booke in *Trauers* 47. *A.*8. *H.*5. that the kinge maie ſurceſſe his time: as where it is found, that tenãt for terme of life hath forfeited his eſtate to the king, wherby the kinge ought to ſeaſe, if his grace ſeaſe not, but tary til he be dead ſo that hee in the reuerſion entreth, hee cannot then ſeaſe, and ſo it maye appeare vnto you, that thoughe this bee an aunciente texte, *Quòd nullum tempus occurrit regi*, yet in caſes it doth: and where this texte is onely appointed by this ſtatut to ſerue where the biſhop taketh the benefit by laps, yet by an equity it is taken in ſome caſes to extend to a plenarty, that is to ſay, where a ſtraunger hath preſented and his clerk is in by fire monethes: As take ỹ caſe to be where the king hath aduowſon in ward, & a ſtranger vſurpes and his clerk is in by fire monethes before the king bringe his *Quare impedit*, yet ſhall this Plenarty be no plee againſte his highnes, but that he ſhall recouer: and the reaſon of it is, becauſe els the kinge ſhoulde be without remedye. For writ of right hee cannot haue, hauinge but an eſtate in the thing as gardein. Wherefore in this caſe, *nullum occurrit ei tempus*, for els it ſhould appeare, that a ſtraunger might hold a thing merely by wronge againſt him without any good ground or beginning that can be intended of it, whiche caſe is agreed *P.*18. *E.*3. *fol.*16. and *P.*43. *E.*3. *fol.*14. But yet in this caſe ỹ king may not put out ỹ Incũbent whiche is admitted, inſtituted, and inducted in the benefice without ſute, that is to ſaye, *Quare impedit*, becauſe it is ſo prouided by the ſtatut of 25. E. 3. capitulo 3. et 13. R. 2. capitulo 1. Like lawe is it, if the kings tenant be ſeaſed of a manner holden in chiefe, to the which aduowſon is appendant, and alieneth the manor with ther aduowſon without licence, after the church becomes void, and a ſtranger vſurpes and ſo twenty vſurpations one after an other, and afterwarde

theſe

theſe alienations without licence are found by office, and the churche becommes voide, the kinge ſhall preſente notwithſtandinge thoſe vſurpations, and if the Churche bee full, his highneſſe maye haue a *Quare impedit* againſte the Incumbent, *Cauſa qua ſupra*. And this appeares in H. 4. E. 3. folio. 2. But if the kinge bee ſeaſed of an aduowſon in his demeane as of fee, it ſeemes that plenarty ſhall bee a good plee againſt him, for there his highneſſe hathe remedy prouided him, that is to ſaye, by writ of righte, and ſo is the opinion of *Shard & Vilby P.* 18. *E.* 3. *folio* 15. *Quere*, for in the booke of *P.* 43. *E.* 3. *fol.* 14. the defendant durſt not abide by the ple, but trauerſed the title that was made for the kinge. And learne whether Plenarty bee a good plee againſt the Queene which holdeth for terme of life, the reuerſion to the kinge, for this caſe is alſo lefte at large in *P.* 18. *E.* 3. *folio* 13. Nowe to the ſtatute, where the woordes be, that no laps ſhall holde againſte the kinge, if hee preſent within ſixe monethes. Theſe woordes, If hee preſente within ſixe monethes, be voide, for though he preſent not, yet title of laps ſhall not take place againſte him by this ſtatute, and therefore the booke is, *P.* 18. *E.* 3. *folio* 21. that where the laps was incurred in the life of the kinges tenaunt, and before the Ordinary preſented, the tenaunt died, and it was adiudged that the king ſhould haue the preſentment, and not the Ordinarye. But peraduenture you will ſay, in that caſe ỹ king could not preſent within the ſix monethes, becauſe his tenaunte was yet aliue. What ſaye you then to this caſe? if the laps did incurre after ỹ deathe of the kinges tenaunt, and before office found, the kynge notwithſtandinge ſhall haue the preſentment after office found, as it is agreed *P.* 14. *H.* 7. 22. and yet there the kinge might haue preſented after the death of his tenant before office founde, and did not. And in the ſaide booke of *P.* 14.

H. 7. folio. 21. it is lefte a queſtion, ſince the ordinarye can not preſent by laps againſte the Kinge, howe and in what manner the cure ſhall bee ſerued in the meane tyme, that is to ſay, betweene the laps and the kinges preſentment, ſome thinke in that caſe that the ordinary ſhoulde preſent one for the meane time whiche ſhoulde be remoueable alwayes at the Kinges pleaſure, and ſomme other thinke he ſhoulde ſequeſter the fruytes to finde the cure, *Ideò quere.* And *Bracton libro tertio* in the writte of *Darrein preſentment* ſaithe, that this title of preſentmente by laps was geeuen to the Ordinary by a conſtitution made in the Councel of *Lateranenſe.*

¶ *Leroy auera le gard de terres de Ideots.*
Cap. 9.

REx habebit cuſtodiam terrarũ fatuorum naturalium capiendo exitus eorundem ſine vaſto & deſtructione, & inueniet eis neceſſaria ſua de cuiuſcunque feodo terræ illæ fucrint, & poſt mortem eorum reddat eam rectis hęredibus ita quòd nullatenus per eoſdem fatuos alienentur, nec quòd eorum hæredes exhæredentur.

This prerogatiue began in the time of Kinge Edwarde the firſte, as it ſhoulde ſeeme to mee, becauſe I finde none that wrote of it before *Britton*, for *Bracton* ſpeakes but a litle of Idcottes, and that in his fifthe booke in the title of Exceptions againſte the pleintife, where he ſaithe: It is a good exception to the perſon of him that complaynethe or bringeth anye action, to ſaye, hee is a foole naturall, *Quia tales non multum diſtant à brutis, qui ratione carent, nec valere debet, quòd cum talibus agitur, ſed tamen diſcuſsio huiuſmodi exceptionis diſcretioni Iudicis relinquitur.* And

ſaithe

saythe, like lawe is it of him that coulde neuer heare, nor speake, from the tyme of his natiuitie, *Et quod inueniendа sunt eis necessaria, quoad vixerint per officium Iudicis pro qualitate personæ, & hæreditatis quantitate, si hæres esse debeat, & si semel authoritate curatoris acquisierit, si fuerit inde electus, recuperabit per assisam, sicut minor.*

By this it appeares, that the kinge had no prerogatiue but the Judge. Howbeit, *Britton fol. 167.* saithe, that the kinge oughte to haue his prerogatiue herein, for these bee his woordes: *Et pour ceo que ascun foits auient, que ascun heire est forte nast, per quoy il nest my able a heritage demaunder & garder, volumus que tiels heires de qui que ils vnques teignount males & females demurgent en nostre garde ouesque toutes lour heritages, sauaunt a chescun seignior toutes autres seruices que a luy appende de terre tenus de luy, & icy remaynount en nostre garde tauntz, come ils duraunt en lour sotye, & ceo ne voilomus nous my de ceux qui deueignount sotes per ascun maladye.* Vpon these woordes of *Britton* I note three thinges, one is, that the kinge shal not haue the custody during theire liues, but duringe theire Idecy, the seconde, notwithstandinge the laude is in the Kinges handes, yet the other Lorde shall haue theire seignouryes, which is by way of petition, as I take it: and the thirde is, that the other Lord shal not haue the wardship of the heir nor of his landes, but onely the king: which three thinges by this Statute of Prerogatiue are not so plainelye sette forthe, as also by this Statute it appeares, that the kinge shall haue the custodye of suche Idcots durynge theire lyues, for the woordes bee: *Et post mortem eorum reddat eam rectis hæredibus*, and not before. The manner howe the Kynge shall comme to thys Prerogatyue, appeares by a booke case *Liuery 96. T. 16.* Edwarde 3. Where *Sharde* saies, that when the king is informed that there is suche

an Ideot, his highneſſe ſhall ſende for him, and cauſe him to be broughte beefore his Chauncellour, or ſomme other whome hee ſhall appointe, and if by examination hee bee founde an Ideot, yet his highneſſe ought not to ſeaſe hys landes, vntyll ſuche time as he bee founde an Ideot *by office*. And in the newe *Natura breuium* folio 232. b. it appeares, that the Kinge appointes all this matter to the Eſcheatour or Sherife, bothe to examine and enquire, in whiche ſaide *Natura breuium* folio 202. e. it appeares, that this office, when it is founde ſhall haue relation *à natiuitate*, to auoyde all meane actes donne by the Ideot, that is to ſaye, his feoffement or releaſe: but learne and enquire whether ſuche feffees ſhall be put out by office without any *Scire facias* to be awarded againſte them. In *Scire facias* 10. M. 18. E. 3 et 116. B. 32. E. 3. et 50. li. aſſ. p. 2. a *Scire facias* was awarded in that caſe, and learne alſo whether the offyce ſhal haue relation for the profits from the time of his natiuitie, or onely from the finding of the office. Then to the expoſition, the woordes bee: *Rex habebit cuſtodiam terrarum fatuorum naturalium.* By theſe woordes it appearethe, that hee muſte bee a foole naturall, that is to ſaie, a foole *à natiuitate*: for if hee were once wiſe, and became a foole by chaunce or miſfortune, the Kinge ſhall haue the cuſtodie of him, and ſo it is agreed in M. 18. E. 3. *Scire facias* 10. And alſo in the newe *Natura breuium* folio 233. and the manner of the triall of him to be a foole naturall appeares in the ſaide *Natura breuium* folio 233. That is to ſaie, if hee cannot tell to twentye pence, or tell his age, or who was his father and mother, or ſuche like thinges: whereby it may appeare, he hath no kinde of vnderſtandinge in that that is eyther for his profite or dammage. But if hee bee learned, and apt to learne, then is he no Ideot, as Maiſter *Fitzherberte* there thinkes. And *Greene* ſaithe in *Sauer de*

Defaut

Default 37. H. 31. Ed.3. That if hee bee able to begette eyther sonne or daughter, he is no foole naturall. The wordes of the Statute bee further: *Capiendo omnes exitus eorundem sine vasto & destructione, & inueniet eis necessaria sua.*

By these wordes it appeareth, that the kynge may take the profites to his owne vse, findinge them theire necessaries. And therefore in the booke before of 31. E.3. the king did lett the lande vnto one of the cosins of the Ideot, yeelding a rent. But these words, *Inueniet eis necessaria*, are not onely meant to Ideots them selues, but also to all them that hange vpon them, as their wife, children, and family. And also by these wordes, *Sine vasto & destructione*, it appeareth, the king is bound to reparations of their landes and tenementes. The wordes bee also, *De cuiuscunque feodo terræ illæ fuerint*. By those wordes *Gard.* 5. H.3. Ed.2. it should seeme the king shoulde be preferred in this title of Ideocy, before any other lorde which might clayme the Ideot as his warde, howe be it learne what other menne thinke therein, *Et post mortem eorum reddat eam rectis hæredibus*. By whiche woordes it shoulde appeare, that the king should haue the custody duringe ỹ life of the Ideot, and that then an *Ouster le mayne* in nature of a Lyuerye shal be sued of the same out of the kings handes: but whether it shall bee made with the issues and profytes from the time of the Ideots deathe, or onely but from the tyme of the tender of the *Ouster le mayne* learne, but if the landes that the king had so in custody bee holden of him in Capite, then notwithstandinge these wordes of the statute yet the kinge shall haue warde, primer seisin, and all other Prerogatiues, as if his tenaunte in chiefe had dyed seased therof, being no Ideot, as it may appere in ỹ new *Natura brevium fo.* 256. *d.* And there it appeares folio 252. h. also, that although the Ideot held no landes of the kinge, yet a

Diem clausit extremum, shall bee awarded after his deathe, to enquire what landes he died seised of, of whome they are holden &c. And it is to bee noted, that if one bee founde Ideot by office, and before the kinge seased the landes, the Ideot dyes, yet the king shal sease, because of these wordes in the statute, *scilicet, post mortem eorum reddat eam rectis hæredibus*, whiche his grace cannot doo but uppon a seisure, and this appeares M. 18. E. 3. *Scire facias* 10. And note also that if there descende to an Ideot no possession in landes, but onelye righte, bee it right of entre, or title of entre, or right of action, the king shal not enter and haue the custody of the same, as appeares in P. 1. H. 7. fol. 24. & M. 2. H. 7. fo. 3. and yet if his tenant of lands holde of him by knights seruice, be disseised, and dieth, his heire within age, the king shall enter and holde the same in warde: and therefore learne what is the reason that shoulde make a difference in these actes. The wordes be further, *Ita quod nullatenus per eosdem fatuos alienentur, nec quod eorum hæredes exharedentur*. By these woordes it appeareth, the lands cannot be aliened by the Ideot, nor the heires disherited, and therefore if the Ideot make a seffement, or release of his landes, and that found by office, the king shall auoide it, as I haue before noted, and so likewise his heires after his deathe by force of these wordes of the statute. And yet it appeares *Sauer de fat.* 37. M. 31. E. 3. ẏ a recouery by defaulte passed againste an Ideot, but execution of the iudgement was stayed, because of the Kynges possession: whiche proues, that notwithstandinge the kinge haue the possession during the Ideots life, yet his highnes hathe no freehold therby, but onely a bare custody, for the freeholde remaines in the heire. And therewith agrees H. 17. E. 3. fo. 11. But what then? this recouerye is not like to this alienation, for by the recouery the Ideots heir is not dishe-

rited

rited by the acte of his auncester, if so bee that the recouery were vpon a good title. And it appeares in P. 33. H. 6. folio 18. That an Ideot shall not be receiued to pleade by gardeyne, or *Proch ine amye*, but hee hym selfe shall appere in proper person in euery action brought against him and who so euer wil pleade best for him, shall be admitted: and learne and enquire if the Ideot bee but tenaunte for terme of life, or yeares, if the kinge shall haue his prerogatiue therein or not, because the Ideot cannot alyen that lande to the disherison of his heire: and if hee shall howe the lessor shall punishe the waste done in the kinges tyme. And learne also, whether the kinge shall haue the goodes of an Ideot, as well as the lande. Then laste of all if one be founde Ideot, whiche is none in deede. The maner howe he shal auoide this office, appeares in the newe *Natura breuium fol.* 233 *a.* That is to saye, he that is falsely founde to be an Ideot, either by him selfe, or his frinds, shall come into the Chauncerye, or before the Chauncellour of Englande and the kinges counsell, and praye to bee examined of his Ideocye, or he maie sue a writte out of the Chauncerye to him that hathe the keepinge of him, to bringe him before the Kinge and his counsell to be examined, and if hee be founde vppon his examination to bee no Ideot, then by that is the office and al the reste of the proces auoyded without any further trauerse. Howe be it, where a *Scire facias* is awarded againste the feoffee of the Ideot, there the feoffee appearinge vpon the *Scire facias*, may trauerse the Ideocy, as it apperes he did in the booke before *Scire facias*. 10. M. 18. E. 3. And note, that by a statute made in the 32. of Henry the eight, the 46. chapiter, Ideottes and theire lande be in the suruey of the courte of wardes & the same court may lette and sette their landes,

but

but not to graunt the custody of their bodyes for any woordes that I can perceiue in the same statute.

¶ *Le Roy puruciera pur luy que nest de sane memory.* *Cap.* 10.

ITem Rex prouidebit quando aliquis qui prius habuerit memoriam & intellectum non fuerit compos mentis suæ, sicut quidam sunt per lucida interualla quòd terræ & tenementa eiusdem saluo custodiantur sine vasto & destructione, & quòd ipse & familia sua de exitibus eorundem viuant & sustineantur competenter, & residuum vltra sustentationem eorundem rationabiliter custodiatur ad opus ipsorum, ita quòd prædicta terræ & tenementa infra prædictum tempus nullatenus alienentur, nec Rex aliquid de exitibus recipiat ad opus suum. Et si obierit in tali statu, tunc illud residuum distribuatur pro anima eiusdem per consilium Ordinarij.

It appeares by *Bracton* in his fifthe booke amongest the exceptions to the person of the pleintif, that it is a good exception, to saye, that he that is demaundant or pleintife, is of *Non sane memory*. For these bee his woordes: *Competit etiam tenenti exceptio peremptoria ex persona petentis, si petens furiosus fuerit, vel non sanæ mentis, quòd discernere nesciat, vel quòd omninò nullam habeant discretionem: tales non multùm distant à brutis, quæ ratione carent, nec valet quòd cum talibus agitur durante furore. Possunt enim quidam aliquando dilucidis gaudere interuallis, & quidam habent furorem perpetuum: quod autem actum fuerit cum talibus tempore quo dilucidis gaudent interuallis ratum erit, ac si cum alijs ageretur, siue furorem suum simulauerint, siue non, acquirere quidem non poterunt in ipso furore, vel cum non fuerint sanæ mentis, aliqui qui consentire non possunt, nec acquisita alienare vel dare, quia alienationi*

non

non magis consentire possunt quàm acquisitioni, sed seisinam retinent, quia animum mutare non possunt, quem acquirendo cùm essent sanæ mentis habuerunt, & furor superueniens nihil adimit non maius quàm morbus incurabilis, sicut lepra: secundum quod dicitur, quòd multa impediunt contrahendo, quæ non dirimunt contractum, & ita sunt multa quæ impediunt promotionem, quæ non deiciunt iam promotum. Et talibus de necessitate dandus est tutor vel curator.

So it appearethe by *Bracton*, that in his tyme yt was thoughte expedient, that folke that were destraught should haue a tutour, or one that should take the charge of them, whiche office since is reuolued vnto the kinge, and made parcell of his prerogatiue. For as *Fitzherbert* in his *Natura breuium* folio 232. very wel saithe. The kinge is the protectour of all his subiectes, and of al theire goodes, landes, and tenements, and therefore of suche as cannot gouerne them selues, nor order their lands & tenements, his grace (as a father) muste take vppon him to prouide for them, that they them selues and their things maye be preserued: And because that lunacy or madnes is not from the tyme of ones birth, (as Idocy is) but commeth sommetimes by fits or courses, his grace therefore can claime no certayne interest in the lunatike person, like as he maye doe in the Ideot: *Gard.* 5. M. 3. E. 3. And therefore it is ordeyned, that his grace shall prouide for suche in the time of theire saide Lunacy or maladies, that they or theire familye maye bee sustained, & their things preserued accordingly, as it is set forthe in this statute. And learne whether the kings interest is such, that after the death of the lunatike, or the recouery of his wittes againe, there must be an *Ouster le maine* sued, as it is sued in the case of the Ideot, or els ẏ ẏ kings interest is auoided *maintenaunt* by the deathe, or recouery againe of the lunatike person.

¶ *Le roy*

¶ *Le Roy auera wrecke, ballenas, & ſturgiones.* Cap. 11.

ITem Rex habebit wreckum maris per totum regnum Ballenas & Sturgiones captas in mari vel alibi infra regnum, exceptis quibuſdam priuilegiatis locis per regem.

This prerogatiue the kinge euermore had by the order of the comon lawe, as may appere by *Bracton* **in his ſecond booke vnder ỹ title,** *Quæres dari poſſit*: **where he ſaithe in this wiſe:** *Sunt etiam aliæ res quæ pertinent ad coronam propter priuilegium regis, & ita communem non recipiant libertatem, quin dari poſſunt, & ad aliud transferri, quia tranſlatio nulli erit damnoſa niſi ipſi Regi ſiue Principi. Et ſi huiuſmodi res alicui conceſſæ fuerint, ſicut wreckum maris, Thesaurus inuentus, Craſſus piſcis, ſicut Ballena & Sturgio, & alij piſces regales, oportet, ſi queſtio inde habeatur, quòd ille qui huiuſmodi libertatem ſibi vendicat, doceat huiuſmodi ad ſe pertinere, quia ſi warrantum non habuerit ſpeciale in hac libertate defendere non poterit, quamuis pro ſe pretendat ſeiſinam longi temporis, diuturnitas enim temporis in hoc caſu non minuit iniuriam, ſed auget, nec in primo, nec in ſecundo caſu currit tempus contra Regem, nec ad ipſum incumbit probatio quòd ad ipſum pertineat, cùm conſtare debeat ſingulis quòd huiuſmodi de iure gentium pertineant ad coronam.*

And alſo in an other place of the ſayde booke vnder the tytle, *De libertatibus quis eas concedere poßit*, **he ſaithe:** *Habebit Rex præ cæteris omnibus in regno ſuo priuilegia de iure gentium propria quæ de iure naturali eſſe debent inuentoris, ſicut Thesaurus, wreckum, Craſſus piſcis, Sturgio, & alia, quæ in nullius bonis eſſe dicũtur, & dicuntur priuilegia, quæ quãuis ad co-*

ronam

ronam pertineant, à corona ſeperari poſſunt, & ad priuatas perſonas transferri, ſed de grâtia ipſius regis ſpeciali cuius gratia & conceſsio ſpecialis, ſinon interuenerit tempus à tali petitione Regẽ non excludat, & in hoc caſu comprobatione non egeat, quia nullum tempus currit contra eum.

And in this agrees *Britton fo.26. & fo 85.* ſo that by theſe writers it ſhoulde appeare, that at thys tyme no man myght preſcribe in *VVreke de le mere*. And that the lawe was then ſo taken, it maye appeare by theſe wordes within the ſtatut, *ſcilicet, exceptis quibuſdam priuilegiatis locis per Regem*, which argues, that that muſt be by the kinges graunt, for no place can otherwiſe be priuileged by the kinge. Howebeit *Hull'* and *Thirn̄* in M. 11. H. 4. fo. 16. thinke, that a man may preſcribe in *VVreke de la mere, tamẽ quere*, for this ſtatut, and *Britton* and *Bracton* are ſince the time of limitation ỹ is to ſay, king Richard ỹ firſt. The wordes of ỹ ſtatut be farther, *Ballenas & Sturgiones. Bracton* in his ſeconde booke vnder the title of *VVreke de la mere*, ſaies, *Quòd de Sturgione ita obſeruatur, quòd rex habebit illum integrum propter ſuum priuilegium, de Ballena verò ſufficit ſecundum quoſdam, ſi Rex inde habuerit caput, & Regina caudam.*

So in *Bractons* time it was doubted by the comon lawe, whether the king ſhould haue this great fiſhe called *Thirpole* wholy or not. And ſo likewiſe in *Brittons* time, as it may appeare in his booke fo. 27. whiche nowe this ſtatute hathe made cleare, and without queſtion.

¶ *Le Roy auera leſchetes des terres des Normans & aliens de qui que ils teegñ, ſauant les ſeignories as ſeigniours. Cap. 12.*

ITem habebit eſchaet' de terris Normanorum, cuiuſcunque feodi fuerint, ſaluo ſeruitio quod pertinet ad capitales Dominos

minos feodi illius, & hoc ſimiliter intelligendum eſt, ſi aliqua hæreditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad fidem regis Franciæ de tempore regis Iohannis, & non ad fidem regis Angliæ, ſicut contingit de baronia Monumetæ poſt mortem Iohannis de Monumeta, cuius hæredes fuerunt de Britañ, & alibi de feodis aliorum recuperauerit Henricus plures eſchaetas de terris Normannorum occaſione prædicta, & eas contulit tenendas de capitalibus dominis feodi per ſeruitia inde debita & conſueta.

It appeareth by the Chronicles, ỹ king John was ỹ laſt duke of Normandy, and that in his time Normandy was loſt, whereupon king Henry his ſonne, as it may appeare by the later clauſe of this chapter, recouered diuers eſchetz of lande within this Realme holden by Normans, whiche after they began to adhere to the French king, the kinges enimy, and became traytors vnto his highneſſe, they forfeited al their landes by order of the common lawe to the king, of whom ſo euer they were holden. Yolwbeit in ſuch caſes, after the forfeiture, if the king had geuen theſe landes to any other, he might not haue geuen them to hold of him ſelfe, but only of them of whom they were before holden, as this ſtatut plainely declareth, that king Henry the third ſo did. And likewiſe in *M.* 20. *E.* 3. *Aſſ.* 124. *H.* 46. *E.* 3. *Petition* 19. it appeareth, that if the kinge do otherwiſe, his patentes ſhalbe expelled, and made to holde of the lordes of whome the landes were holden before the treaſon, and that by a Petition of Right to be ſued vnto the kinge for the redreſſe of the ſame, for other remedye haue they none, and diſtraine they may not, as appeareth in the new *Natura brevium folio* 159. *A.* And further it ſhould appeare by the ſaide booke of 20. Ed. 3. that the kinge oughte not to reteine ſuch land in his owne hands no while, but muſt diſpoſe them ouer to hold of them that were lordes thereof

at the

at the time of the treaſon committed. Hereby maye you gather, that this ſtatut in his firſt braunche is but a confirmation of the common lawe, and that longe tyme before the making hereof king Henry the third had this preroga tiue, as it dothe manifeſtly appeare in the latter braunche thereof. And alſo by *Bracton* in his firſte booke in the title *De cuſtodijs & maritagijs dominorum*, and likewiſe in *Britton folio* 28. The wordes of the ſtatut be further: *Hoc ſimiliter intelligendum eſt ſi aliqua hæreditas deſcendat alicui nato in partibus tranſmarinis, & cuius anteceſſores fuerunt ad Fidem Regis Franciæ de tempore Iohannis Angliæ, ſicut de baronia Monumetæ poſt mortem Iohannis de Monumeta, cuius hæredes fuerunt de Britannia vel alibi.* By this braunche it ſhoulde appeare, that at this tyme menne of Normandy, Gaſcoin, Guyon, Angeo, and Britain, were inheritable within this realme, as well as Engliſhe men, becauſe that they were ſometime ſubiect vnto the kinge of England, and vnder their dominion vntill king Johns time, as is aforeſaide, and yet after his time thoſe men (ſauing ſuche whoſe landes were taken awaye for treaſon) were ſtill inheritable within this realme, til the makinge of this ſtatute. And in the time of peace betweene the two kings of Englande and Fraunce they were aunſwerable within this realme, if thei had brought any action for their landes and tenementes, as it doothe plainely appeare by *Bracton* in his fifthe booke in the title *De exceptione quia alienigena*, for theſe be his wordes: *Eſt autem alia exceptio quæ competit tenenti ex perſona petentis propter defectum nationis quæ dilatoria eſt, & non perimit actionem. Vt ſi quis alienigena qui fuerit ad fidem regis Franciæ, & actionem inſtituit verſus aliquem qui fuerit ad fidem regis Angliæ, talis non reſpondeatur ſaltem donec terræ ſint communes, nec etiam ſi Rex ei con-*

conceſſerit ſpecialiter placitari, quia ſicut Anglicus non auditur in placitando aliquem de terris & tenementis in Francia, ita non debet alienigena & Francigena, qui fuerit ad fidē regis Franciæ audiri placitando in Anglia.

Note here, that he ſaith, that this exceptiō is but dilatory, and not peremptory, whiche proueth that he ſhall haue his action at an other tyme, that is to ſaye, in the tyme of peace. And alſo he ſaithe after, *Donec terræ ſint communes*, which is as much to ſaie, vntil ſuch time as there is peace betwene France and England. Alſo *Bracton* in his thirde booke vnder the title, *Quòd mulier oſtendat warrantum per quem petit dotem*, ſaithe: *Si warrantus fuerit ad fidem Regis Franciæ, & excipiatur de warranto, remanebit dotis exactio in ſuſpenſo imperpetuum, vel ad tempus ſaltem donec terræ fuerint communes.* This warraunt of dower is the heire of the huſband, for by the auncient law by *Glanuill li.6. ca.16.* if a woman had brought her writ of dower againſt any other, but the heire, he was not bound to anſweare her dower, vntil ſuche time as ſhee had brought forthe her warrant, that is to ſay, the heir. In like caſe after ſhee is endowed, ſhee is not bound to anſweare to any other wout the heire, and if it might appeare that the heire had no right in the two partes, then ſhoulde ſhee bee barred of her action of dower, as it appeareth in the caſe before, that his righte is ſuſpended when he is a Frencheman, and the two realmes at warre. Howbeit it appereth, as I haue ſaid before, that this exception is not peremptory, but ẏ after ẏ two realmes be againe at peace, ſhee ſhall haue her dower, *Dower* 179. M.4.H.3. The wordes of this branche be alſo in ẏ Copulatiue, that is to ſay, that ẏ auncеſter muſte be of ẏ allegeance of the French king, & that the heir of the ſaid auncеſter is born in ẏ part beyond ſea. I put caſe then that the auncеſter were of the allegeaunce bothe of the one kinge

and

and the other that is to ſay the Frenche king and the king of England whether is this within the compas of this ſtatute: For *Bracton* in his ſayde v. booke vnder the tytle *De exceptione quia alienigena* ſayeth. *Quod ſunt aliqui qui ſunt ad fidem vtriuſque ſicut fuit V V. Comes Mareſcallus & manens in Anglia & Michael de Seins manens in Francia & alii plures, et ita tamen quod ſi contingat guerra moueri inter Reges remaneat perſonaliter quilibet eorum cum eo cui fecerit ligeantiã.* Whereby it ſhoulde appeare that of ſuche as were in allegeaunce to bothe kynges, the kynge ſhoulde haue no eſchetes of theire landes. For the woordes of the ſtatut be not onelye *ad fidem regis Francię*, but alſo, *et non ad fidem regis Ang. ideo quere.* And who ſhalbee inheritable at thys daye that bee borne in the parties beyonde the ſea, & who not. See the ſtatute thereof made in the 25. yeare of kynge Edwarde the thirde, *de natis in partibus tranſmarinis.*

Si lheire le tenaunt le roy en chiefe entre auaunt liuery nul franktenement luy accrue et la feme perdra ſa dower. Cap. xiiii.

QVando aliquis qui de rege tenet in Capite in fata decedat & heres eius ingrediatur tenementum quod anteceſſor ſuus tenuit de rege die quo obiit antequam fecerit homagium regi & ſeiſinam ſuam ceperit per regem tunc nullum accreſcit ei liberum tenementum. Et ſi obierit ſeiſitus per idem tempus vxor eius non habebit dotem de tenemento illo, ſicut contingit de Matilda filia comitis Hereford vxoris manuſell mareſcalli, que poſt mortem V Vilhelmi mareſcalli Anglię fratris ſui cepit ſeiſinam caſtri & manerii de Scrogoill, et obiit in eodem caſtro antequam intraſſet per regem et feciſſet ei homagium, et

vnde concordatum fuit quod vxor non haberet dotem, eo quod vir suus non intrauit per Regem immo per intrusionem, sed hoc non intelligatur de socagio et paruis tenuris.

Thys statute is but an affirmation of the common lawe, as it may appeare by the case comprised in the same which was ruled before the makynge of thys statute and iudged accordinge to the effecte hereof. And thys statute seemeth to putt a paine vppon the heires that will entrude before they haue sued their liuery, and taketh away from them the free holde that the lawe had else vested in them: And yet it is not taken so generallye as the woordes bee, but speciallye and onelye of intrusions after office foũd, and not before: And therefore if the heire enter after the death of his aunceſtour and before office founde, and the kynge pardoneth hym all entries wyth the profites, thys is good and amounteth to a speciall liuerte, so that the heire needeth to sue no mo liueries, and yet if thentrusion were after office and then the kinge woulde pardone hym it were voyde, because that at the tyme of the pardõ hee had no free holde, whereuppon the pardon myght enure H.3. H.7. folio 3. Lyke lawe is if the heire before office enter and make a feoffement and the king pardoneth the feoffee it is good, and yet suche a feoffement after office with a pardon were voide for the reason I haue made before. Like lawe is if the entrye bee before office and the pardon after office this is voyde, because that by office the kinge taketh the possession from the heire or feoffe, and then is there no possession whereupon the pardone maye enure: And so voyde. For the office when it is found hath relation from the death of the kinges tenaunt, it it bee so that the kynge do not release hys ryght before the office founde, and that appeareth P. 16. Edwarde the folwerth folio 1. where it is also sayde that the pardon must bee aswell of profites as of the entrye, or els after office founde

the

the kynge ſhalbee aunſwered of the profites and M.13. H 4.folio 3.there is a difference putt betweene the pardone that is made to the heire,and the pardone that is made to the feoffee: For in the caſe of the feoffee the pardon muſt bee ſpeciall rehearſynge all the matters. Then let vs ſee further for the endowement, if after the deathe of the kynges tenaunt the heire doth not enter but dye before office founde, hys wyfe ſhalbee endowed becauſe of a poſſeſſion in lawe that was in hym. P.1. Henrici 7. 17. M.38.Edwarde the thirde.30. Lyke lawe is it if hee dye after office founde and before anye entrye H.4 Henric.7 fo.1.Lyke lawe is it if hee enter before office and dye.

But if the kynge bee once ſeyſed by office and the heyre dye before liuerye and the nert heire will enter before a *Deuenerunt* ſued and dyeth,his wife ſhall not be endowed for in that caſe it is an intruſion after office. For when the kynge is ones ſeyſed by office this ſeyſine remaynes till liuerye or *Ouſter le maine* bee ſued. And this caſe is P. 1.H.7.19.The woordes of the Statute bee further *ſed hoc non intelligatur de ſocagio & paruis tenuris*. Theſe woordes are to bee intended of common Socage,for if hee holde of the kynge in Socage in chiefe and will intrude after office,*nullum accreſcit ei liberum tenementum*, no more than if the landes were holden by knyghtes ſeruyce in chiefe.

And it is a generall grounde that in all caſes where hee that ſueth hys generall liuerye or *Ouſter le mayne* miſſueth the ſame and entreth thereby,this entrye is an intruſion vppon the kynges poſſeſſion,and his wife of that poſſeſſiō ſhall not bee endowed as appeareth H.21.Edwarde 3.fol.1 M.24.E 3.65.

Le roy auera leſchetes que aueigne quant temporalties deueſque ſont en ſes mains. Cap. xiiii.

ITem Rex habebit eſcaetas de terris libere tenentium Archiepiſcoporum et Epiſcoporum quando ipſi tenentes dãnati ſunt pro felonia facta tempore vacationis, dum temporalia eorundẽ fuerunt in manu domini regis conferend cui voluerit imperpetuum, ſaluo ſeruicio quod ad dictos prelatos inde pertinet & fieri conſueuit.

Of this ſtatute I fynd no booke caſe, Howbeit the letter of it is very plaine and needes no maner of expoſition. For it goeth not to any other eſchetes than ſuch as grow vpon offences. And if the crime or offence were don while the lande was in the kinges hands, notwithſtandinge the party were not attainted thereof vntill ſuche time as the landes be out of the kinges handes, yet the kynge ſhall haue the eſchete by force of this ſtatute. And here it appeareth how the king ſhall not holde the landes forfaited ſtil in his handes but muſt geeue them ouer to holde of them that they were holden of before.

Per graunt de roy fees, auowſons, et dowments des femes, ne paſſa, ſi ne ſont ſpecialment noſmes. Cap. xv.

QVando dominus Rex dat vel concedit alicui manerium vel terram cum pertiñ, niſi faciat in charta ſua vel ſcripti expreſſam mentionem de feodis mill' aduocationibus eccleſiarum, et dotibus cum accidunt ad prædictum manerium vel terram pertinẽ tunc his diebus rex reſeruat ſibi eadem feoda, aduocationes cum dotibus licet inter alias perſonas non fuerint obſeruata.

It

It is agreed in T.43.E.3.f.22. ẏ by the order of the commō lawe before this statut, if ẏ king had ben seised of a maner to the which aduowson had ben appendant, & had geuen it to mee, notwithstanding ẏ in the kings graunt there had bene no mencion made of the auowson nor of these wordz *cū pertiñ*, yet thauowson had passed from his highnes by ẏ said grant: for in those dayes the king was but a cōmon ꝑson, & a writte of *Enter sur disseisin*, & all other accions dyd lye against him as against any other cōmō ꝑson. And therfore in *Ass*.431. A 20. H.3. A write of entre was brought against one supposing ẏ they had no entre but by disseisin, which the king did to the demaundant when he was wͤin age, & also *VVilby* M.24.E.3.54. reporteth ẏ he hath sene a write which was *Precipe H regi Angliæ*, in place wherof is now geuen peticiō by his prerogatiue. And so it is said li. H.22.E.3.3. ẏ in ẏ time of kinge H.3. & before, the kyng should be ēpleded as any other cōmon ꝑson. But kyng E. his sonne ordained ẏ none should sue him but be driuē to their peticiō. Howbeit (sauing reformaciō of these books) I think the law was neuer so ẏ a man shoulde haue anye such accion against the king: For *Bracton* whiche wrote in king H.3. time or neere therupō, saith in his 3. booke vnder ẏ tytle *Contra quē cōpetit assisa* in this wise: *Inter cetera vidēdum est quis sit ille qui de iecit, Princeps ex potentia vel aliquis nomine suo vel iudex qui male iudicauerit, an priuata ꝑsona, si princeps vel rex vel alius qui superiorem non habuerit nisi deum, contra ipsum non habebitur remedium ꝑ assisam, imo tantum erit locus supplicationi, vt factum suum corrigat et emendet, quod si non fecerit, sufficiat ei pro pena quod deum expectet vltorem, qui dicit, mihi vindictā et ego retribuā, nisi sit qui dicat qd vniuersitas regni & Barronagiū suū facere possit & debeat in cur' ipsius regis, sed si ali⁹ ex facto et disseisina principis statim vel ex post facto in seisinā institerit, quāuis talis incidat in assisam et in penā vel tantū ad restitutionem secundū qd seisina ad ipsum ꝑue-*

nerit statim vel ex post facto sine principe tamen conueniri nõ poterit per assisam, quia licet quodamodo disseisinam fecerit tamen non per se sed cum alio. s. cum principe & ita quod sine eo respõdere non potuit, et ita non procedit assisa. Indirecte tamen & quasi ex incidente & sine breui comprehendi poterit persona principis ad hoc quod factum suum emendet, vel in personam suam redundabit iniuria manifeste, vt ecce. Esto quod impetretur assisa tãtum super eum ad quem res translata est sine principe, et qui tenetur ad restitutionem & ad penam, vel ad minus ad restitutionẽ et ipse respondeat quod sine principe qui fecit iniuriam per se vel per suos respondere non debeat, quia ipse princeps p se fecit iniuriã vel ipsi duo insimul, extunc erit factum & iniuria in manu domini regis, qui dici debet in facto quasi warrantus, et quod tunc poterit si warrantus voluerit factum suum emendare quasi a lege compulsus, & quam in persona sua cum sit ei submissus debet firmiter obseruare. So that by *Bracton* it appeareth that no accion lyeth against the kyng but the partye greeued ys driuen to sue to the kynge by petition: But the reasõ why that aduowsons shoulde passe in the kinges case by ỹ order of the common lawe though it were not expressed in ỹ graunt was this I suppose, because that landes or tenementes were not then compted as things that touched the royal estate or that made the kinges crowne lyke as Lyberties or fraunchises did. For the one a common persone might haue aswell as the kynge, but the other none might haue but the kynge or such as were able to shew his grãt therof, and therefore sayth *Bracton* in his firste booke vnder the title *que res dari possit* that for landes *currit tempus contra regem sicut contra quamlibet priuatam personam*. Which is as muche to saye, that if the kinge had right to any such landes or tenementes and had surcessed hys tyme so longe, that it exceeded the tyme of limitation in a writte of right, hys hyghnesse had lost then hys ryght for euer.

And herewith agreeth *Britton* fo. 29. But that is (saith *Britton*) of landes, parcel of the kynges eschetes or purchased

landes

landes, and not of the auncient demeanes of hys crowne-
for of those *nullum currit ei tempus*, if he haue anye right to
demaunde them. So that by *Britton* this reason wyll not
serue for landes parcel of the Crowne. *Ideo quere veram ra-
tionem*. Howbeit since this statut made, what lands soeuer
they bee those thinges that are comprised in this statute
passe not wythout making expresse mention thereof. He-
therto we haue spoken of the reason why at the cõmõ law
aduowsons shoulde passe by graunt of the manour wõut
being named, nowe let vs see howe since the makynge of
this statute it shall likewise passe by graunt of the ma-
nour without being expressely named & how not. M. 5. E. 3
fo. 66. And if the king render vp to him that was in ward
at full age his landes, or to a byshop his temporalties, al-
though he make no mencion of knightes fees or auowsõs
yet al passe therewith, for lyke as the kings seisin in suche
case is by these woordes *omnia terras & tenementa*, without
speking of fees or auowsõs, euen so being sued out of his
handes by these woordes, *omnia terras & tenementa*, fees &
aduowsons do passe without making any mencion there-
of. And *Liuerie* 30. T. 16. E. 3. Where after the death of an
ydeot, the king rendred againe the landes to the heir not
makyng mencion of fees or aduowsons, & yet he had thẽ.
And likewise Y 41. E. 3 fo. 5. T 44 Ed 3. fo. 25. the kynge
graunted the temporalties to one that was electe bishopp
before he was consecrate & adiudged the fees & aduowsons
passed without making any mencion thereof, & yet at the
time of the graunt he was not bishop, for he lacked conse-
cration. And the reason in all these cases is, for that ỹ king
was but seised in another bodies right, and by his liuerye
he geueth nothing vnto them but onely restoreth them to
their right they had before. Like lawe should it appeare to
be by *Fincheden* Y 29. E. 3. 7. If auowson of a church be ap-
pẽdãt to a Priory which priory is seised into the kigz hãds
by reasõ ỹ an alĩe is patrõ of it, & afterward ỹ kig dimiseth

the saide Priory *cum pertineñ*, not making mencion of the auowson vnto the said Prior yeldinge a rent, to haue & to holde the same during the warre. And his reason is thys, for that the right & free holde in this case remaineth still in the Prior notwithstanding any such seisin, & the kynge is but to haue an annuel profit therof, and no right, but if any be to sue dower or liuery with a partition out of ỹ kinges hands they by that cannot haue thauowson if mencio bee not therof made, no more than they can that claym by Graunt & yet the king rendreth them the thing in respect of a right before, as he doth in the other cases. But what then: they clayme not the whole lande that is in the kingz handes but onely parcel therof, and then thauowson euer more abydeth with that that remaines, if expresse mencion bee not made therof, and so not like the cases before wher the king make liuerie of the whole. And this case appeareth also in the said booke of H.5.E.3.f.67. And note that in all cases wher the king seiseth a thing as his own pper right as he doth in the case of wardes, eschete, & such lyke there nothing passeth by graunt of the appurtenaunce if expresse mencion be made of the thing that is apurtenant by name: and therefore the case was H.29.Edw.3.fol.7. That where auowson of a churche did belong to a Priory which Priorie was seised into ỹ kings hands *ratione guerre* and letten againe to ferme for a rent to the Prior, and afterward the king graunted away the patronage of ỹ Priory to a man and to his heires, and the custody (duringe ỹ warre) of the Priorie with all that belongeth to the same of the rent reserued with all the profits of the priorie ỹ the king had seised, and yet thought that thauowson passed not, for that it was not named. But if there be woords in the kings graunt that do amount to asmuch as therpresse naming of the thing or conternaile as much, then ỹ thing passeth as farre forth as if it were expressely named. And

therefore

therefore, if a maner to the which auowson is apendaunt be in the kinges handes by eschete or purchase & the kinge geeueth the manor as fully and as wholly as suche a one helde the same before the scheate or purchase, in this case thauowson passeth, & so it is agreede in 43.E.3 fol.22. And learne forasmuch as this statute maketh mencion but of 3 things, that is to saye, knightes fees, auowsons of churches & dowers, whether in such case any other thing then auowson which is appendant or appurtenāt shoulde passe by wordes *cum pertiñ* wout naming of it. For it appereth in 18.H.6.12. that where a Leete was within a town & the king graunted the town *cum ptiñ* not naminge the Leete and it was thought the Lete should passe thereby. But the reason was there because it was parcel of the towne, and ỹ that is parcell or incident to another thinge, passeth by graunt of the thing without making any mencion therof. And therefore if the king be seised of a corody by reason ỹ he is a patron of a priorie, & granteth away the patronage wout making any mencion of the corody, yet the grantee shal haue the Corody: and so it is iudged 26.li.*ass*.p.53. and yet the kings graunte of a warde shall not haue *Garde per cause de garde* if expresse mencion be not made therof *Garde* 70.M.35.H.6, And so it is if one be to haue restitution of ỹ auowson *vna cum exit'* and the churche becommeth voyd, and the king makes him restitution with the mean issues and profits taken, yet he shal not haue this aduoydaunce that is so fallen without expresse mencion bee made therof in his restitution, as appeareth in P.18.E.3.21.& P 24 E 3.29.M.39.E.3.21.& P.46.E.3.*Graunt*.60. And yet if ỹ king be seised of auowson and the church becommeth void, and he graunteth the auowson awaye, his highnesse shall not now present nor take the benefite of the auoidance, as appeareth in T.9.E.3.26. Therefore enquire what the reaso is of these diuersities & what is ment by these wordes in

the

the ſtatute *Dotibus cum acciderit ad predictum manerium vel terram pertin.* For as I ſuppoſe theſe woords ſerue to none other purpoſe but where the kinge is to aſſigne dower, & he granteth ouer the maner *Durante minore etate* of ỹ heire that is in ward to another, this patentee ſhall not haue ỹ aſſignement of dower if mencion be not made thereof in his patent. Howebeit learne and enquire what is the true meaning of the ſaid woordes.

Le roy auera chattels forfaits & an, iour & waſt. Ca.16.

ITem rex habebit omnia catalla felonum damnatorum & fugitiuorum vbicunque fuerint inuenta et ſi ipſi habeant liberum tenementum tunc illud ſtatim capietur in manum domini regis, & rex habebit oēs exitus eiuſdem p vnum annū & vnum diem, & tenementum illud vaſtabitur et diſtruetur de domibus, boſcis & gardinis, et aliis quibuſcunque ad predictum tenementū ſpectantibus, exceptis hominibus quorundam priuilegiatorū inde p regem. Et poſtquam dūs rex habuerit annum diem, & vaſtum, tunc reddatur tenementum illud capitali domino feodi illius niſi prius faciat finem p anno die & vaſto de conſuetud' tamē dicitur quod poſt annum & diem terre & tenementa felonum in Gloc. reddentur & reuertentur proximo heredi, cui debuerunt deſcendiſſe ſi felonia facta non fuiſſet. Et in Kent in Gauelkind the father to the bough, the ſonne to the plough. *Ibidem omnes heredes maſculi participabunt hereditatem eorum, & ſimiliter femine: ſed femine non participabunt cū maſculis. Et mulier habebit poſt mortem viri medietatem p dote ſua. Et ſi mulier fornicetur in viduitate perdet dotē ſuam, vel ſi ſit deſponſata viro.* Before this ſtatute *Glanuil* did write in this wiſe in his vij. booke ca. 17 fo. 59. vnder the title *De vltimis heredibus. Notandum quod ſi quis de felonia conuictus fuerit, vel confeſſus in curia & de dño rege tenuerit in capite, tunc tam terra quam omnes res mobiles ſue et catalla penes quemcumque inueniantur, ad opus domini*

regis

regis capientur sine omni recuperatione alicuius heredis sui, si autem de alio quam de rege tenuerit is qui vtlagatus est vel de felonia conuictus tunc quoque omnes res eius mobiles Regis erũt. Terra autem per vnum annum permanebit in manu domini Regis. Elapso autem anno, terra eadem ad rectum dominum scilicet ad ipsum de cuius feodo est reuertetur, veruntamen cum domorum subuersione & arborum extirpatione. Et generaliter quotiescunque aliquis aliquid fecerit vel dixerit in curia propter quod per iudicium curiæ exheredatus fuerit, hereditas eius ad dñum feodi de quo illa tenetur tanquam Escaeta solet reuerti. Forisfactura autem filii & heredis alicuius patrem non exheredat, neque fratrem neque alium quam se ipsum. Preterea si defunto fuerit aliquis condempnatus, res eius mobiles, et omnia catalla sua vicecomiti prouinciæ remanere solent, terram autem si quę fuerit dñs feodi recuperabit statim non expectato Anno. By this it should appeare that in *Glanuilles* tyme, for theste only the shirife should haue the goods ý were forfait, and that as it should seeme to his owne vse, and not to the kinges. For hee sayeth, the lordes in that case shoulde recouer their eschetes before the yere, day, & the waste. Howbeit this statut made since that time geues al felons goods to the kynge without any exception. And hereupõ it is to bee seene first what is comprised in this worde *cattalla*. *Cattalla* is a generall woorde whiche comprehendes as well Chattels mouable as not mouable. For leases for terme of yeares are wõin this woord *cattalla*, as appeareth by *Bracton* in his y. booke in the title of Forfaiture of felons saying *quod terminum annorum erit domini regis, vt catalla. Quia accipit terminum ad similitudinẽ cattallorum.* And therewith agreeth the booke in M.39.H.6.35. Also vnder this word *cattalla* is taken the issues & profits of landes & tenements of them ý fly for felony vntil such time as they be attainted or acquited. And lykewise of the lands & tenements of clerkes cõuict, vntill such tyme as hee hath his purgation. I meane landes and tenements as well of their wyues right as of

their

their own right, & so is the book *Forfeiture* 16. *& Corone* 374 P.4.E.2.& 3.E.3.*Coron* 356. Also vnder this woorde *catalla* are taken the emblements ỹ were growing vpon ỹ groũd at the time ỹ the forfaiture of ỹ goodes first began to take place as apeareth *Corone* 344.3.E.3. Also vnder thys word *catalla* is compriſed a right of accion to goodes, as where goods be taken away wrongfully from the felon, M.6.H 7.fo.9.or where one is indetted to the felon by obligation M.19.H.6.f.47.or is accõptable to ỹ felon for anye receits or otherwise, & this apeareth P.28.E.3.fol.92. & 50.*Aſſ.*2.& *Trauers* 33.A.32.li all. Also vnder this woorde *cattalla*, is taken ſometimes goods wherin the felon hath no property as if a man deliuer money out of a bagg, or corne out of a ſack to one to kepe which is afterwards attainted of felony, ỹ money or corne in this caſe is forfaited. Like law is it if a thief ỹ ſteales goods ſeuerally frõ ſundry pſons and afterward is attainted for one of the ſaid felonies, by this one attainder the goods ỹ are ſtollen frõ the other be alſo forfaited to the king A.3.E 3.*Corone* 317.323.& 334. Like law is it if one ſteale goods & before he be attainted therof hee killeth him ſelf A 3 E 3 *Corone* 318.& 319. or dyeth in priſõ or abiures the realme confeſſinge another felony then ỹ for ỹ which he fled to the church, in theſe caſes he forfaiteth ỹ goods ỹ he did ſteale *Corone* 379.380. H.12.E.2.3. E.3.*Corone* 162.H.8.E.3.fo.11.M.44.E.3.f 44.26.li.all.p.32. So is it if the wife kill her huſband, ſhee forfaites the goodes of her huſband *Corone* 423.8. E 2.*It' canc.* Then let vs ſee further what may be ſaide vpon this woorde *Felonum*. If thoffence that is committed be felony, then is it properlye wythin the compas of this woorde *Felonũ*, & hee that committes the offence ſhalbe ſaid *Felon*: Notwithſtanding that he therefore ſhal not ſuffer deth: as in a caſe where one kylleth an other *ſe defendendo Corone* 116 T 16 E 3. or by miſaduenture *Corone* 302,43 E 3 this offence is felony, and he that committes it ſhal forfait his goods notwithſtanding ỹ he obtain

pardon

pardon of life. For it was at the kinges pleasure to graūt pardon or not. But so shall not bee that killeth one that would robbe him in his house, or ỹ officer that killeth one that wil not be rested, nor he that killeth anye thinge not yet borne, as a childe in his mothers belly, nor the parson that is straught that killeth another in his madnesse. 12. E 3. *Dower* 183. *& Forfaiture* 53. For in all these cases it is not felonye. The wordes be further, *Damnatorum & fugitiuorum*. Sometymes the kyng shal haue his chatels, although hee be not cōdemned of ỹ felonye as if a man bee arrested for felony, and afterwardes breakes the arrest and the other ere he can take him againe killes him, in this case he that is killed shall forfait his goods, and yet he was neuer attainted of thoffence. Like lawe is it if hee bee killed in the first arrest where he woulde not bee arrested. And this appeareth in 3. E. 3. *Coroñ* 312. ℣ 290. Howbeit since that tyme there was a statute made Anno 34. Edw. 3 cap. 12. Which seemes to alter the lawe in these cases if it bee not that you will say peraduenture that hee shall forfait them *quia fugam fecit. Ideo quere*. He that is *felode se* shall forfaite his goods and yet he was neuer atttainted. Lyke lawe is before, of the clerke conuict. And so is it of suche as stande mute 34. E. 3. *Eschete* 10. or challenge aboue the number of two enquestes. Then further, this word *fugitiuorum* is taken suche as flye or withdraw them selues for the felony that they be endited, appealed or accused of, for that makes a great presumption against them, as *Bracton* saith in hys seconde booke vnder the tytle *Ad que restituatur vtlagatus*, and for that presumption sake shal the vtlary proceede whether he bee giltie of the felony or not. And also saieth hee in the sayde booke *quod vtlagati de felonia gerunt caput lupinum, et secum suum portant iudicium, ita quod sine iudiciali inquisitione pereunt, quia merito sine lege pereunt, qui secundum legem viuere recusauerunt, et hoc ita si in capiendo*

fugiant

fugiant vel se defendant. Si autem viui capti fuerint vel se reddiderint, vita illorum & mors est in manu domini Regis, et qui taliter captum interfecerit, respondebit pro eo sicut pro alio nisi sit in locis vbi consuetudo se habeat in contrarium, videlicet in com Hereford et Glouc.

And in another place he sayeth, *Quod nullum crimen maius inobedientia, quia pro contemptu & inobedientia poterit quis excommunicari, sicut pro quolibet peccato mortali, cum omnes subditi debeant esse Regi tanquam precellenti, maxime in honestis, et ducibus eius tanquam ab eo missis, et sic concordat lex diuina aliquantulum cum humana.* And also sayeth *quod vtlagatus de felonia foriffacit patriam & amicos, foriffacit quæ pacis sunt, foriffacit quę legis sunt, foriffacit quæ iuris sunt, & possessionis, & foriffacit actionem ante vtlagariam sibi datam.*

Thus by the way, haue I noted vnto you suche thynges out of *Bracton*, as mee seemeth bee notable, and make somewhat for this purpose: Althoughe I needed not to haue gone so farre as to outlawrie for exposition of thys woorde *fugitiuorum*, but myght haue rested at the flying. For if one flye for the death of a man, and thys presented before the Corroner, hee shall forfait all his goodes that hee had the daye of that presentment or at any tyme since, tyll hee bee acquited of the sayde deathe. *Forfeiture* 35. Anñ 3. Edwarde the thirde. And notwithstandinge that an enquest vppon hys arraynment dooth afterwarde acquyte hym, and also fynde that hee did not flye, yet hys goodes remayne still forfayt, as it appeareth 22. libro Assis. p. 96. et *Forfeiture* 29. & 31. H. 5. H. 4. *Coron* 296. 3. Edwarde the third. Lyke lawe is it, where one arrayned of felonye before Justyces is founde not gyltye of the felonye. Howbeit yt is founde that hee wythdrewe hym selfe for the sayde felonye, nowe shall he forfait his goodes but no profites of landes, as hee shall do in the other case where it is found before the Corroner, For when the forfayture shall haue

no

no further relation, but to the daye of the presentment, and not to the daye of the flyinge, then when at the same daye hee is acquyted of the felonye, then is the kynges tytle gone as to the landes, and so consequentlye gone as to the issues. And thys appeareth 3. Edwarde the thirde *Coron* 244. Also there is another manner of flying, for the whyche a manne shall forfait hys gooddes, and that ys where in appeale or endytement of felony, the party that is appealed or endyted will not appeare, but suffer the exigent to be awarded againste him, hee thereby forfayteth hys goodes and the profites of his landes, whyche hee hadde the daye of therigent awarded or at anye tyme after. And notwythstandynge that hee afterwardes happen to bee acquited of the sayde felonye, yet the forfayture remaynes. For when hee taryeth the awardynge of therigent, it appeareth of recorde that hee hath wythdrawen hym selfe, and thys you shall fynde in twentye twoe Assise 81. and 41. assise 3. Howbeit herein is there heede to bee taken lest there bee errour in the awardyng of the sayde Exigent: For if there bee, hee shall then forfait nothynge, as if the exigent bee awarded agaynste the accessorye before it bee awarded agaynste the principall, or before the principall bee attainted, or if an exigent bee awarded against one that hath a charter of pardon for the felonye (of elder date than is the awardinge of therigent) and hath founde suertie accordynge to the statute and the same retourned into the Chauncerye before therigent awarded: For in these cases he shall auoyde the forfetture vppon the matter shewed Pl. 43. Edwarde the thirde .18. Contrary lawe it is if after the exigent awarded the appeale do abate for insufficiencye, or for that that hee that is outlawed was imprisoned meane betweene the awardynge of the exigent and ths outlawry pronounced.

For

For in that case if he reuerse the vtlarie, yet his goods remaine stil forfait. Howebeit if he were imprisoned at the time of the exigent awarded otherwise it is, & this appeareth *Forfeiture* 19.H.19.E.3.& 31.H.30 H.6. Also it is to bee noted ỳ one may flye for felony & yet he shall forfaite nothing, as where one is arrested for suspicion of felonye & escapes, yet for this he shall not forfait his gooddes if hee were not taken w̄ the maner or at the sute of the pty or endyted of the same as it appeareth 42.li.ass.5. *Quere* if he bee endited afterward whether he shal then forfait thē or not Also an accessory after the felony cōmitted shal forfait nothing vpon a *Fugam fecit*. Otherwise it is of accessaris before the felony cōmitted, as it appeareth H.4.H.7.18. But he ỳ wdrawes him self but for *Petite larcenie* shall forfayt his goods, as it appeareth 8.E.2. *Coron* 406. *tamen quere*.

And note for a generall rule that the township where the goods of felones or fugitiues bee found shall alwaies aūswere ỳ king of them, & the shirife, of the issues and pfits of the lands: and therefore the township may seise thē for the king. For it is no plee for them to saye they were not deliuered vnto them. And this appeareth in *Fitzherbert*, in ỳ title of *Corone* 390.366.300.347.290.398. and 36.H.6.25.22 li.ass.p.81.H.11.H.4.f 41.H.13.H.4.f.13. But at what time ỳ goods of a felone or fugitiue shalbee seised it is further to be seene and how the attainder shal haue relation. Whē it is found by enquest before the corōners *quod fugam fecit* by and by the shirife shal seise his landes into the kinges handes by word only wythout taking any enquest for the same purpose, and also shal seise all his goods into the kynges handes, and take an enqueste as well of free men as of villeins to appraise them and cause the prise to be enrolled to the corōners & to deliuer them to the townesship to make aunswer thereof to the king. And this appeareth 22.lib ass.Pl.96. And herewith agreeth the statute of Corōners

ners, and also *Britton fol.* 4. Where you shall see this matter set forth more fully. And in M.43.E.3.24. it is said that the Kings minister may seise the goodes of a felon before attainder, & if the party finde suerty, then he to leaue them in the custody of the party, or els in the neighbors custody. For ẏ said minister ought not to cary thē away with him, and T.7.H.4.47. *Hull* saithe, that if one be endited of felony, yet till he be attainted, his goodes shall not be remoued out of his house, but in the meane time shall bee in his neighbours keepinge, and he to be founde of the same. And in the Register there is a writ, *Quòd tenta & bona taliter capta, videantur, imbreuientur, & saluò custodiantur per ballium ipsius capti, qui securitatem regi inuenient ei respondend' si &c. saluis inde ipsi capto & familiæ suę necessarijs quàm diu fuerit in prisona.* And so is *Britton fol.* 17. Howbe it now by ẏ statut made in the first yere of king R.3.ca.3. it is ordeined ẏ none shal seise ẏ goodes of any person arrested or imprisoned, before that they be attainted, or that the goodes bee otherwise forfeited, vpon pain to pay ẏ double value therof. This statut extendeth not to any other, but to such as be in prison: For by the statut de *Proditionibus* 25.E.3.cap.14. If one be endited of felony, whiche is not imprisoned, the sheriue at the second *Cape* shall seise his goodes, & yet they bee not at that time forfeited. And also the statute of R.3. doth not extende to lands, but only to goods. Then for the relation, as for the goods it hath no relation but onely frō the day that ẏ forfeiture is presented, or verdit geuen, and therefore it is saide in *Forfeiture* 30. H.33.E.3. that if he sell them before he be attainted, the sale is good, but for landes it hath relation to the day of the felony cōmitted, be it that the attainder be by verdit or vtlary, as it appereth M.38.E 3.31. et T.30.H.6.fo.5. or be it that he be attainted without proces of law, as in the cases aboue remembred, where he is killed in ẏ flying, as appereth *Corone* 289. a.3.E.3. And note, that if the attainder and office found of his landes be

both win the yere of the felony first cõmitted, ỹ it shal haue no relatiõ for ỹ yeares profits, otherwise it is if it be after ỹ yere, as appereth in *Corone* 85. *A.* 3. *E.* 3. This booke must be vnderstãd as I take it, where ỹ attainder & the office be before any day of paymẽt win the yere. The words of this chapter be further: *Et si ipsi habeãt liberũ tentũ, tunc illud statim capietur in manũ dñi regis, & rex habebit oẽs exitus eiusdem per vnũ annũ & vnũ diẽ, & tentũ illud vastabitur & destruetur de doĩbus, boscis, & gardinis, & alijs quibuscunq; ad prædictum tentũ spectãtibus.* It shold appere by *Glanuill* in ỹ beginning of this chapter, ỹ the comon law was as much before ỹ making hereof in al cases of felony, sauing for theft, in which the king had no yere & day. Howbeit after *Glanuils* time ỹ statut of *Magna charta* was made, which saith in ỹ 22. chap. therof, *Nos non tenebimꝰ terras illorũ qui conuicti fuerint de felonia, nisi per vnũ annũ & vnũ diẽ, & tũc reddãtur terræ illæ dñis feodorũ.* By this it shold seme this statut doth remit ỹ wast, because it speaketh nothinge of it, or els peraduenture you wil say, that this word, *Nisi*, argues and proues ỹ the king before the statute of *Magna charta* might haue holden it as long as he would, but to the contrary of that exposition is *Glanuill*, as it appeareth before. Also *Bracton* whiche wrote somewhat after his time: For by *Bracton* in his second booke it appeareth, that before the making of the saide statute of *Magna charta*, the king had nothing els but the wast, and to the intent he should remit the wast, the yere & day was afterward geuen to the King: for these be his wordes in the title of Utlary: *Si verò terrã liberam habuerint vtlagati, statim capienda est in manum dñi regis, & tenenda per vnum annum & vnum diem, ad capitales dominos post terminũ illum reuersura, si de alio tenuerit quàm de rege: si autem de rege, tunc erit Escaeta ipsius regis, & hoc verum est, quòd per talem terminum remanebit in manu domini Regis, nisi ipse capitalis dominus, vel alius finem fecerit pro termino regi habendo, sed quæ sit causa quare terra remanebit in manu domini regis, videtur quòd talis est, quia*

venera

reuera cùm quis fuerit conuictus de aliqua felonia in potestate domini regis erit prosternẽdi ædificia, extirpandi gardina, & arãdi prata, & quoniam hmoi vrgebantur in graue damnum dominorum, pro communi vtilitate prouisum fuit, quòd hmoi dura & grauia remanerent, & quòd dns rex propter hoc haberet commoditatem totius terræ illius per vnum annum & vnum diem, & sic omnia cum integritate reuerterentur in manus capitaliũ dnorum, nunc autẽ petitur vtrùm s. Finis pro termino, & similiter pro vasto. Et non video rationẽ quare, nisi quòd terminus bene poterit esse per se sine vasto, eò quòd fugitiuus & vtlagatus non solùm delinquit erga eum qui sequitur & appellat, sed erga regem, cuius pacẽ infringit, contra fidem suam cui tenetur, quia quilibet cùm faciat sacramentum, iurat, salua fide domini regis. Thus our authors agree not vpon this yeare and day, for *Bracton* is contrary to *Glanuil* that wrote before him. How be it *Britton* whiche was likewise before the makinge of this statut of *Prerogatiua* agreeth with *Bracton*, as it appereth in the booke fo. 14 adding further that the king shall not haue the yeare & day of lãd ẏ is holdẽ only for terme of life, or yeres, or by fresh disseisin, or in fee terme, or in morgage. And so is *Bracton* also therwith agreing in the second boke, but now sins his time this statut of *Prerogatiua* was made, whiche geues the king, as you may perceiue, both the yere, day, & waste. And first he saith, *Quòd rex habebit oẽs exitus eiusdẽ per vnũ annũ & vnum diem.* By this it should appeare, ẏ the king should not haue the issues of the land but by a yere & a day, but yet it is clere, ẏ he shal haue ẏ issues also frõ the time of ẏ felony don, vntil the time his highnes hath had ẏ yeare, day, & waste, & not the lorde (allowing that ẏ is to be allowed for findinge of the prisoner) for it can not be intended, that the lord should haue the mean profits, because the land shal be deliuered vnto him without profit, that is to say, wasted, & destroyed. And therewith agreeth the booke in *Corõne* 29. *A.3.E.3.* & *P.49.E.3 fol.11.* And there it appereth, that if an office be found 20. yeres after the attainder, the king shal

haue the profits from the time of ỹ felony committed vntil the yeare and day next after the office founde. For though the lord be entitled to haue theschete, yet the kings title for the yeare day & waſt goeth before the lords: For the words be, *Poſtquam dominus rex habuerit annum, diem, & vaſtum, tunc reddatur tenementum illud capitali domino*. Alſo by this word, *Reddatur*, it ſemes the lord cãnot enter into his eſchets after office founde, but is driuen to ſue an *Ouſter le main* for the ſame out of the kinges handes, as it appeareth in *Trauers* 48.A.8.E.2. but if a ſtraunger abate before office, the lord ſhal haue a writ of eſchet againſt him, & recouer, yet ỹ notwithſtanding whẽ an office ſhal be found, afterward the king may ſeiſe for the yeare, day, & waſte, & ſhal be anſweared of the meſne profites, like as it is when the kinges tenaunt in chiefe dieth, his heire of full age, an eſtranger abateth, the heire may haue aſſiſe of Mortdaũceſter, if he wil, & recouer againſte ỹ abator, & yet vpõ an office found, afterward ỹ king ſhal ſeiſe for primer ſeaſon, & be anſweared of al the meane profits, and the heire driuen to ſue liuerye. Further then let vs ſee in what caſes the kinge ſhal haue *Annum, diem, & vaſtum*, and in what not. The king ſhal not haue *annũ, diẽ, & vaſtũ* of clerkes cõuict after verdit, becauſe he forfeits no land *Corone* 332.A.3.E.3. Like law is it of lãds in Gauelkind, where ỹ father is hanged, but otherwiſe it is, if he be outlawed or abiured for felony, for there ỹ king ſhal haue the yeare, day, & waſt, and this appereth in *Preſcription* P.50.A.8.E.2. If ỹ huſbãd be attainted of felony, ỹ king ſhal haue ỹ yeare, day, & waſt of the lãds of ỹ wife, & yet in ỹ caſe ỹ lords ſhal not haue their eſchetes. But what then? ỹ huſband might haue don waſt, and the wife had had no remedy for the ſame, & by ỹ ſame reaſon the king may do as much, & this appereth in *Corone* P.327.A.3.E.3. And alſo in *Bractõ* in his ſecond booke, and alſo it ſhould there appeare, ỹ the wife is driuen to ſue an *Ouſter le maine* after ỹ death of her huſband. If one be areſted

ted for felony, & breakes the arreſt, ſo ỹ in ỹ purſuit of him he is killed, becauſe he woulde not otherwiſe be taken, the king in this caſe ſhal haue ỹ yere, day & waſt, as it apereth *Corone* 312. & 290. *A.* 3. *E.* 3. If a man commit felony, & hathe his charter of pardon, yet the king ſhal haue the yere, day & waſt, & the lords their eſchets, & this appereth *Corone* 308. *A.* 3. *E.* 3. for the pardon doth not reſtore him but to the law For though the kinge would pardon him with wordes of reſtitutiõ, yet his grace could not therby reſtore him to the lands holden of other. And note, ỹ the kinge ſhal haue the yere, day & waſt o' lãds in ancient demeſne, if it ſo be that the tenant might haue ſold the ſaid lands againſt the will of the lord, as it appeareth *Corone* 310. *A.* 3. *E.* 3. and that notwithſtanding that the ſaid lands were allwaies vſed to be ſurrendred by the rod, & to paſſe by ſurrender. The wordes of the ſtatut be further: *Exceptis hominibus quorundam priuilegiatorũ inde per regem*. That is as much to ſay, except ſuche as haue *Bona & catalla felonum* by the kings graunt, for a man cannot preſcribe to haue *Bona & catalla felonum*, as appeareth T. 46. E. 3. f. 16. P. 1. H. 7. f. 23. M. 8. H. 4. f. 2. For none may haue this prerogatiue of yeare, day, and waſte, but only the King, although he would claime it by charter from the King or otherwiſe, as it appereth *Corone* 310. *A.* 3. *E.* 3. But when ỹ Kinge is ſeiſed of it, he may cõmit it ouer as appereth by *Bracton* in his ſaid 2 booke. But if the land wherof ỹ King ſhould haue the yere, day and waſt be vnder the yerely value of iij. s. iiij d. it is vſed to be remitted for the ſmalnes and ſimpleneſſe of the thing, as appeareth *Corone* 327. *A.* 3. *E.* 3. for it ſhold coſt more the ſuyng of it out of the Kings hands, then the thing is worth. And note the cuſtome of *Glouc.* compriſed in this ſtatut, wherby it ſhold appeare, that notwithſtanding any ſuch cuſtome, yet the King ſhould haue *Annum & diem*, but not ſo of landes in Gauelkinde, as I haue ſaid before.

DIuers other Prerogatiues there bee, which the king hath by the order of the common law, that be not within this ſtatut compriſed, a great part wherof vnder the title of Prerogatiue Maiſter Fitzherbert hath moſt diligently noted in his great Abrigement, and ſo wel placed there, that I doo of purpoſe omitt to rehearſe them here. The reſt would require ſo long a ſearch, that vnles I had gathered and noted them already (as I haue not don in dede) I ſhould be faine to purſue the whole body of the common laws for the knowledge therof, wherunto time ſerueth me not, wherfore at this time mine intent is, not to meddle with them.

¶ Proces to be sued after the deathe of the kinges tenaunt in chiefe.

Cap. xvij.

BY a statute made in the 33. yeare of the late kinge of most famous memory H.8. the 22. chap. it is ordeined & prouided amonge other things, that no person or persõs hauing lands or tenemẽts aboue the yerely value of fiue poundes shall haue or sue any liuerye before inquisition or office founde before thescheto2 or other commissioner or commissioners, by vertue of the kinges writ, or commission to bee directed out of the kings chancery or other courts, hauing authority to make such writs or cõmissiõs for sauing of liueries which writs or commissions shal not passe out of ỹ chauncery, nor any other courtes, but by a warrant or byl to bee assigned & subscribed wᵗ the hands and names of ỹ maister of the kings wardes and liueries, surueior of his liueries, or the attorney and receiuour of the courte of wardes and liueries, or three, two, or one of them, to bee directed and deliuered to ỹ chancellor of Englãd, or to any other chancellor or officer hauing power to award such writs. And if the lands or tenemẽts wherof any inquisition is to be had by vertue of any such writ or commission excede ỹ yerely value of fiue pounds, that then such as sue for such writs & commissions shal pay for the seale and writing therof such fee as hath bene accustomed. And if the said landes & tenemẽts wherof any such inquisitions & offices are to be foũd by vertue of any such writ or cõmission excede not the said yerely value of v. li. then such as shal sue for such writs or commissions shall pay for the seale of euery of them vi. d. and for the writing vi. d. and not aboue. This statut dothe

not ſett forth the name of the writ or cõmiſſion that ſhalbe ſued, howbeit theſe words ẏ folow, that is to ſay (for ſuing of liueryes) do ſomewhat open the mindes of the makers of this ſtatut, and declare ẏ their meaning was of the *diem clauſit*, & ſuch other writs or cõmiſſions as ſerue for ẏ purpoſe, & not of euery writ or cõmiſſiõ, for ſo might an office be found by a wrong writ or cõmiſſion, which ſhold want matter, or be other wiſe inſufficient to make liueries. But learn and enquire, if after a good writ or commiſſon ſued forthe, the office ẏ is founde is not ſufficient, whether the party ſhall haue his liuery or not without ſuing a *melius inquirendum*, or a newe office becauſe that ſome parauenture wil ſay that ẏ woords of ẏ ſtatut be performed ẏ is to wite an office or inquiſiciõ is foũd. But to that it may be anſwered and ſaide that it is no office when it is inſufficient at leaſt wiſe toward the party ẏ ſhoold ſue liuery thereupon, although it be a good office toward the King if any thinge therein conteined be for his benefit. And learne alſo if the kings tenant dye ſeiſed of lands in diuers counties whether by force of this ſtatut he ſhal haue an inquiſitiõ or office to be found in euery county where the lands lie, for ſo it is vſed to be don vpõ al general liueries, & he ẏ ſueth his general liuery otherwiſe miſſueth ẏ ſame, and is an intruder vpon the kings poſſeſſiõ: howbeit perauenture you wil ſay, ẏ if ẏ lãds excede ẏ yerely value of xx. markes he muſt ſue a ſpecial liuery, & not a general, & therfore it makes no mater for the inquiſitiõ or office, & ẏ the wordes of ẏ ſtatut wil beare it wel enough if ther be but one office foũd. But as to ẏ it may be ſaid, ẏ the meaning of ẏ ſtatut was not ſo for the king can neuer be fully enformed of his title, vnles ther be an office foũd in euery ſhire, & alſo by finding of ſeueral offices one record may be better for the King thẽ an other, wherof his grace mai take auãtage, for the beſt ſhal be takẽ for ẏ King. Thus it appereth by ſtatut, how that of

lands

lands aboue ỹ yerely value of v.li. inquisitiō must be made & an office found after the death of the kings tenant before liuery can be had: and that must be by a writ of *diem clausit extremum*, for that is the proper writ that is to be sued for that purpose, if any suit be made within the yere after the kings tenants death, or a special commission in the nature of the writ of *diem clausit*. For vpon a general commission to enquire generally of al wards, no particuler person can haue liuery. And if he tarry til after the yeare, then he can not pursue any of these, but for his remedy must sue a writ called *Mandamus*, or a commission in nature of ỹ writ, and therupō to cause an office to be found, & so to haue liuery: But if an office be once found by *diem clausit*, and the heire dieth in the kings ward, his heire must sue *Deuenerūt*, and no *Mandamus*, although it be after ỹ yere of ỹ death of him that died in ward, & so is ỹ rule in the register. Somtimes it happeneth that after deliuery of the writ of cōmission, & before office foūd, the eschetor dieth, or is remoued frō his office, in which case thē the proces ỹ is awarded to his successor, is a writte called *Datur nobis intelligi*, but if office bee found before his death or remouing, which office is not returned, then shal there be a *Certiorare* awarded to his executors to returne the same. For it is a matter of recorde as sone as ỹ Iurors haue put their seale vnto it, notwithstāding it be not returned. And note ỹ thawarding of this writ of *diē clausit*, or special cōmissiō is peremptory to him ỹ sueth for it. For if he leese it, or be takē frō him wt force, he geatz no moe writs or cōmissiōs for the lands in ỹ county, & this appereth in the new *Natura breuium fo.* 253.c. Howbeit *P.14. E.4.f.5.* it is touched by the way, ỹ in suche cases he shoulde haue a new writ, *Ideò quere*. But after office once found by a *Diē clausit*, or special cōmissiō as wel ỹ King & party therby are bound as euery other strāger: for so much lands as are cōprised within the office, & neither ỹ king ne the par-

tye

tye, nor any other shal haue any mo writs or cõmissiõs to enquire any further of these lands, except it be in such cases as I shal hereafter recite, for so the law should neuer haue end, but newe heires might be founde euery day by office which were inconuenient, and the king shold not know to whom to make liuery, and this apereth 9.14. E.4.5. & H.2 H.7.f.12. M.4, H.4.fo.15. But where after office founde it is surmised for the kinge, that his highnes hath a better title, then was found for him by the first office, whether the matter surmised may stande with the matter found by the first office or not, yea althoughe it be more contrariant or repugnãt, it is not material: but in such cases a newe writ or commission shal be awarded. As take the case to be this: By the first office it is found, the kinges tenaunt in chiefe died seised, his heire within age, where in deede hee dyed without heire, so ỹ therby the lands ought to haue escheted to the king. Or that he was tenant in taile, and died without issue of his body, whereby the lands ought to haue reuerted vnto the king, in these cases the court shal award a new writ or cõmission for ỹ king. Like law is it where the daughter is found heir by office, & afterward the sonne is borne. Or where ther is but one daughter found heire by office, where there ought to haue bene two found heires. Or if by the first office one is found heire of ful age, which is not heir in dede, but an other is heire which is wĩn age: In al these cases there shal be a newe writ or commission awarded, *Causa qua supra*, as it may appere *Liuery* 28. T.12 K.2. 9.14. E.4 f.5. and M.4. H.7.f.6. & 30. li all.28. yea and a more straunger case, as it should apere in the new *Natura breuiũ f.*261. & 262. that is to say, where ỹ king was to haue no benefit at al more then hee had by the firste office, and yet a newe cõmission was awarded, and therefore the case was there, the second brother was found heire by the firste office, & of ful age, now the eldest had a commission being also of ful age, to finde him heire, and therupon had his liuery

uery. So is it where ỹ be found daughters & heirs to one man of certein lands, where in dede parcel of ỹ saide land was geuen to one of the said ỹ. daughters in frank marriage, now shee that claimed the frank marriage had a special cõmission to enquire of the same: and yet by that seconde office the king had no benefit, *Ideò quere.* For this *Natura breuium* seemeth to impugne the bookes before rehearsed. And like as he may pray a newe writ or commission in the cases aboue rehearsed before liuery had, euen so may he do in the like cases after liuery had, if the liuery be a general liuery, & thereupon as sone as the title is found, the kinge shal reseise, but not without a *Scire facias*, because the statute made at Lincolne, hathe so prouided, as I shall open more fully when I come to that place, and that in all these aforesaid cases a new *Diẽ clausit* may be as wel awarded, as a new commission, as it appeareth añ 29.l.ass.p.30.

¶ What thing shalbe in the king without office or seasure & what not, & whereby an office onely without any seasure or other proces the king shalbe in possession & where not, & where hee shal bee in possession without an office, but not before a seasure, & how the king may be entitled by any other record, as wel as by an office, & where a man may enter as wel vpon the kings possession, as any other.

Cap. xviij.

By a statut made the 33. yere of the late king of famous memory H.8. ỹ 20. chapter it is amongest other things prouided, that if any person or persones shal bee attainted of high treason by the course of the common lawes or statutes of this realme, that in euery such case, euery such attainder by the common law shalbe of good strength, value force & effect, as if it had bene done by authority of parliament

ment. And the kings maiesty, his heirs and successors shal haue as much benefit & auantage by such attainder as wel of vses, rights, entres, conditions, as possessiõs, reuersions remainders, & al other things, as if it had ben don and declared by authority of parliament, and shalbe deemed & adiudged in actual & real possession of the lands, tenements, hereditaments, vses, goodes, cattels, & al other things of ẏ offenders so attainted, whiche his highnes ought lawfully to haue, & which thei so being attainted ought or might lawfully lose & forfeit, if the attainder had ben don by authority of parliament, wout any office or inquisition to be foũd of the same, any law, statut, or vse of the realme to the contrary therof in any wise notwŏstãding. This statut makes it clere and wout question, that in cases of high treson the lands of him ẏ is attainted are in ẏ kinge by and by wout any office. But for other attainder it remains as it was at ẏ comon lawe, and therfore learne if one which holdeth of the king be attainted of petit treason or felony, whether in this case by the attainder his lands be in the king without office, and me semeth by attainder and death together they should be in the king in law, howbeit not in deede, vntill suche time his highnes seise them by his officer, or that an office be therof foũd, for by that attainder ẏ lands are forfeited to ẏ king by mater of record, & then whẽ the party dyeth, either ẏ freehold must be in suspence, or els adiudged in ẏ king in law, for he ẏ was seised hath corrupted his blod, & is dead wout heire, & therfore his highnes is become owner therof in law, & a possession in law vested in him of the same lãds, which his highnes at his wil and pleasure may make a possession in dede as soon as he wil take vpon him knowledge of the said lands, and sease them by his officer And therfore the booke is agr ed 39.20 E.4.f.11. that if he that is attainted be seised of auowsõs appẽdãt, as soone as ẏ church becõmeth void, ẏ king mai p̃sẽt wout any office

which

which proues that ẏ king by thattainder was patrō before any office foūd, or els how cold his highnes presēt? & I see no differēce betwen lāds & auowsōs in this case, for auowson is not so trāsitory toward the king, but ẏ he may take the presentment therof at al times whē he wil, *quia nullum tempus ei occurrit.* Howbeit learne what the law wil in this case, for many mē are of ẏ cōtrary opinion. And see in the boke M.4.E.4.22. cōcerning this mater: and so note what is said of a possession in law, for as I take it, there may be a possessiō in law in ẏ king, as wel as a possession in dede, which possessiō in law is euer wout office or any other mater of record, as whē ẏ possessiō is cast vpō his highnes by a discēt, reuerter, remaīder, or eschet, or in title of his seignory or prerogatiue, as for wardship, primer seisin, or for ẏ custody of tēporalties of a bishop during ẏ time ẏ the see is vacant: in al these cases wout any office or other matter of record, there is a possessiō in law vested in ẏ kings highnes, ẏ is to say, for that ẏ doth discēd, reuert, remain, or eschete, ẏ frehold is cast vpon him in law, as it shold be vpō a comon person in ẏ like case, or els ẏ freehold should be in suspence, which may not be, *T.9.H.7.2.& 9.P.49.E.3.fol.16. & Estoppel 255.M.4.E.2.* and of the rest the possession in law of a cattel is in his highnes in right of his seignory, which his highnes at his wil & plesure mai make a possessiō ī dede by entre or seisure. *H.21.H.7.f.7.M.20.E.4.f.11.& 14 & P.21. E.4.f.1.T.24.E.3.f.54.M.10.H.4.f.3.* but not to make it a possession in dede by his grant, because there is a statut made in the 18. yere of H.6.ca.6. to ẏ let therof, which prouideth, ẏ al letters patēts made of lāds & teñts before office found & returned, or win one month after, but only to him ẏ tendeth his trauerse, shalbe void. This statut extends only to lāds & tenemēts, therfore of ẏ body of his ward his highnes may make a grāt notwstādīg this statut, as me semeth, for ẏ is neither lād ne tenemēt: also notwstāding ẏ this statut doth restrain the granting of ẏ lands & tenements, yet the

29 h 8. Bro. offyce denunt lescheto. 56. acc de reuter aps mort t p vie de lesele Roys.

seisin

seisin therof remaines & is in the King, as it was by order of the comon law, which is as I said before, in his highnes in law, although not in dede, vntil suchtime as he hath made a seisin or an entre by his eschetor, or a grāt therof, whi che waieth both to a seisure & a graunt, in such cases where the graunt may be good, and not restrained by statut, vntill such time an office thereof be found: For an office that entitleth the king to the possessiō, is sufficient by it selfe wō out any seisure or entre of the eschetor to make a possessiō in dede in the king, if it be so that the possession were vacant when the office was found. But if the possession wer not vacant, but an other then hee in whose right the Kinge seiseth, was tenaunt thereof at the time of the findinge of the office, then must ỹ king enter, or seise by his officer before the possession in dede shalbe adiudged in him *P.14.H.7 f.21. 15.H.7.f.6. 20.E.4.f.11.& 14. & P.21. E.4.f.1.* yea and if his highnes seise not by the space of a yere and a day after the findinge of an office, then may hee not seise without a *Scire facias* to be pursued against him that is tenant thereof. And of this matter you may see bookes *29.ass. 30. 32. ass. Trauers 32.50.ass.2.& Gard.105.M.6.R.2.* But hereuppon is there a distinction to be made, whether that the king is entitled vnto by office, be it a thing manuel, and wherof profit may bee taken forthwith after the findinge of the office or not. For if it be such a thing as is not manuel, & wherof there is no profit to be taken forthwith, vntill suche tyme it falleth, in that case, althoughe the Kinge be in possession of the right of the thynge, yet is he not in possession of the profit thereof, vntill suche time as his highnesse actuallye by his officer when it falleth, taketh & perceiueth the sayd profit, as for example. The thing the King is ētitled vnto by office is no lande, but auowson, rente, or a common, although that the King by this office be patron of the auowson, or owner of the rent or common, and therby when the benefice becometh void, may present, or whē the rent day

commeth

cõmeth, may receiue the rent, or whē ẏ comon is to be takē may vse ẏ said comõ, yet if ẏ office ẏ entitleth his highnes, be false, & he that was in possession at ẏ time of ẏ office, taketh ẏ profit whē it falleth before the kings officer do take it, in this case this taking is no entrusiõ vpõ the kingꝭ possessions, for he was neuer seised in dede: wherefore being driuē to his action, if his highnes bring his *Quare impedit*, or actiõ of trespas, the defendāt may trauerse ẏ office with him in the said actions, keping stil his possessiõ, & nede not to sue in the chancery for the trauersing of the same. Thus may you see a difference betwene a thing ẏ is manuel, & a thing not manuel, & what ẏ reson therof should be, learn, for as I suppose the reson of it is no other, but as I said before, ẏ whē a stranger is tenant at time of ẏ office finding, the office maketh no possessiõ in dede in the king before an entry or a seiser. And thē whē the kings officer taketh not the profits whē it falleth, but suffreth him ẏ was in possession to take it, then was the kinge neuer seised, but hee stil remaines in possessiõ, that was possessed at the time of the finding of the office, vntill such time as seiser be made for the king, which cannot be don at all times, as it may be of land, but only at such times as the profit therof to be takē, that is to say, when it falleth, and that is now past for this time, seing it is already taken, & therefore the king in that case is driuen to his actiõ. But *quere*, whether his highnes may be brought in possession in those cases by a clayme, or not. And these cases may you see in the bookes of *H.17.E.3 f.10. P.21. E.4. f 1. P.5. E.4.f.3. H.4.E.3.f.1. & P.14.H.7. f.21.* Like lawe is it, where an office is founde, which dothe not entitle the king to the possessiõ by entry, but only by actiõ, as where it is found ẏ the kings tenāt for terme of life, or yeres, hath don waste *P.14.H.7.f.23. & 25.* or beinge his tenāt in fee simple hath ceased by ẏ. yeres *P.15 H.7.f.6.* or made a feffemẽt by collusiõ cõtrary to the statut of Marlebrige *T.12. H.7.f. 1. & 19. & H.7.f. 18.* or suche like. For it is a

general

neral rule, ỹ in al caſes wher a comon perſon cānot enter but is dziuen to his action, there the King cannot haue the poſſeſſion, but by like action, oz els by a *ſcire facias* after oſfice found in nature of the actiō , foz ỹ office in the caſe entitleth the King to no other thing but only to the action, as appeareth in Ỹ.21. Ỹ.7 fo,18. But *quere* of a feffement that is found to be made by colluſion contrary to ỹ ſtatut A.34 & 35.Ỹ.8.ca.5.foz in that caſe it ſeemes his highnes may enter without *Scire facias*, becauſe the ſaid ſtatut appoints no action to be ſued in the caſe. And note, that in al theſe caſes befoze, where the king is dziuen to his *Scire facias*, oz other action , if the office be falſe, the party may trauerſe ỹ office with the King, keping ſtill his poſſeſſion , whether it be in the chancery, oz any other court, and neede not to ſue any *Ouſter le maine*, if it bee founde foz him, becauſe he was neuer out of poſſeſſion. Then further let vs ſee in what caſes the king cannot be entitled but only by office oz other mater of recozd, & in what caſes he may, how be it not to haue any poſſeſſiō either in dede oz in law, vntil ỹ time there be a ſeiſure made. And as to that, note that in all caſes where a common perſon cannot haue a poſſeſſion neither in dede noz in law without an entre, there the King cānot haue it without an office, oz ſuch like matter of recozd, as where ỹ king hath title to enter foz a *Mortmain*, oz foz a cōditiō bzoken, in this caſe ỹ king can haue no title, vntil ſuch time az the ſaid *Mortmain* T.9.Ỹ.7.f.2.oz cōdition bzokē Ỹ. 2.Ỹ.7 f.8.be found by office, oz by ſome other recozd, as appereth Ꝑ.15.Ỹ.7.6. So is it in diuers other caſes concerning the kigs pzerogatiue, as in ỹ caſe of Idcots, of lunatiks which haue lāds oz tenemēt, oz whē his highnes is to be entitled foz *annū, diē, & vaſtū* of perſons attainted Ꝑ. 49. E.3.11. oz foz an alienatiō wout licēce, oz to ſeiſe ỹ tempozalties of a biſhop foz a contēpt 21.E.3.3.29.30. & Ỹ.21.Ỹ.7.7. in al thoſe caſes his title muſt be firſt found by office, oz otherwiſe appere of recozd, foz theſe rights his highnes hath ōly as kīg.

But

But if his highnes haue cause to seise ỹ lãds of his widow ỹ hath maried her self wout licence his highnes may seise notwstanding there be no office found of her mariage as it apeareth in ỹ new *Natura brevium* fo.174. Learne what should be ỹ reason therof, moze thã in ỹ case of alienaciõ beforе. Like lawe hath been vsed where his highnes is to sese lands of pziors aliẽs within this realm *ratione guerre*, his highnes doth it without any office, foz in both these cases ỹ kings title is notozious ynough although it appeare not of recozd. But yet in those cases his highnes must seise ere he can haue any interest in the lãds because they be penall toward ỹ party & of these cases you shall find bookes. Ỹ 21. Ỹ. 7. f. 7. Ỹ. 14. Ỹ. 4. f. 36. Ỹ. 22. E. 4. f. 44. Other pzerogatiues the king hath which extende only to personal and transitozy things *ad bona & catalla felonũ, wreke de mere, tres sour troue*, oz the pfits of lands of clerks conuict of felony, oz of psons outlawed in a psonall accion, to these thinges it semes the king is entitled although there be no office oz other matter of recozd found of them as it should appeare Ỹ. 11. Ỹ. 4. fo. 41. Ỹ. 21. Ỹ. 7. f. 7. et 27. li all. pl. 50. And note ỹ if the kings title appere any way of recozde, it is as good as if it were found by office. Therfoze if the kinges tenãt alien without licence which alienation apeareth by fine oz other matter of recozd, in this case if there be another recozd found ỹ pueth the lands to be holden of the kynge in capite vpon these ij. recozds together pces shalbe made against the party by *Scire fac.* to come & shew why he should not make a fine foz the alienacion 50. li. all. 2. Like law it is where there is a recozd to pue that he ỹ alieneth is but tenant in taile of the kings gift, & he pretending to bee tenant in fee simple doth purchace a lycence of alienacion & alieneth & after dyeth without issue, which death is found by office but nothing of this state taile oz lycence apeareth in the said office, yet vpon al these recozds laide together the king shall haue a *Scire fac.* against the alienee to show

why the land ſhould not be ſeiſed into his hãds & his highnes anſwered of the ꝓfits ſince the death of the tenaunt in taile, for when he was but tenaunt in taile it appeareth ꝙ the licence was purchaſed vpon a falſe ſuggeſtion, and ſo voide, & then the landz ought to reuert to the king becauſe his reuerſion could not be diſcontinued. And this may you ſee 40.li.all.30. Then laſt of all it is to be ſeene whether ꝙ poſſeſſion may be taken from the kinge by entrye or not. And as to that, if the kings poſſeſſion be by matter of recorde, no ꝓſon can diſſeiſe him or take the poſſeſſion from him, for like as the king cannot take by gift from any ꝓſõ but by matter of recorde, no more maye the poſſeſſion departe from him but by matter of recorde, and therefore hys highneſſe cannot haue aſſiſe or *Ejectione firme ſiue cuſtodie*, like as a common ꝓſon may: but his highnes maye haue a writte of rauiſhement of *Garde vt patet*, *Gard* 3. *T*. 47. *E*.3. yea & though the entrie be not immediatly vpon him but vpon his cõmittee or fermer, yet it is no diſſeiſin to hys highnes as it apeareth añ 4.*H*.7.1.*M*.2.*H* 4.7.*M*.14.*E*.4. f.2.& *Suggeſtion* 9.*M*.35.*H*.6. By the which ſaid booke of 35. it alſo appeareth, that if the king or his committee bee caſt out of the wardſhip of the landz that the remedy is in this maner, that is to ſay, vpon a ſuggeſtion thereof made in ꝙ Chauncery, there ſhalbee awarded a writte called *Amoueas manum*, and that vppon a certeine paine, whiche writte may be awarded onlye vpon his ſuggeſtion without any preſentment or enquiry, and this writte may be granted to the committee as well before poſſeſſion had of the ward as after, for when the king was once poſſeſſed by office, & grauntes it ouer, yet this poſſeſſion ſtil remaines, for the king abydeth ſtil gardein notwſtanding any ſuch grant: And therfore this writte of *Amoueas ſub pena* lyeth for ꝙ graunt or cõmittee, although the grant be *abſq; aliquo inde reddendo*. And if vpon this writte of *Amoueas* the defendaunt

daunt doe not restore the thinge, then shall goe out against him an attachement, vppon whiche write the defendaunt may appere and shewe his title, whiche if it bee founde against him hee shall then make restitution by iudgement and pay a fyne and aunswer the meane issues and profits. Thus doth it appeare that the king cannot be disseised or ejected if his highnesse bee once seised by mater of recorde. Otherwise it is before his seisin be by mater of recorde, for if before office a straunger enter by tytle or wythout title this is no intrusion vppon the kynges possession, but in this case the heire maye haue *Assise de mortdauncester* against the straunger if he will, whiche proues that by his entry he hath gotten bothe a freeholde and a fee simple. But as soone as the office is founde and the eschetour entreth, this possession of the straunger whyche entred wythout tytle is cleerelye vndoone, and the free holde and the fee simple reuested in the heyre. But if the entre of the straunger were by tytle and afterward office is founde and the kynge seyseth, whether then it bee so or no learne. And it shoulde seeme to bee all one, or els the kynges seisure is not good, for howe can the kynge seise in an other bodies right if the right were taken awaye before by an entrie? therefore it shoulde seeme eyther his highnesse hath no title in that case to seise or else by hys seisure, the freeholde and the fee simple must reuest in the heire. But note that if the kynge wyll by colour of a recorde seyse an other mannes lande, whych recorde geeues him no tytle in deede, notwythstandynge anye suche seisure, yet hee that hath ryght maye enter vppon the kynge, and by his entre reuestes againe in hymselfe bothe the free hold and fee simple, as where it is foũd the kynges tenaunt dyed seised but of an estate for terme of lyfe the reuersion to an other and thys notwythstandyng the kynge seyseth, in this case if hee in the reuersi-

on entre vpon the king, this is a good entrie: and therfore the case was, he made a feoffement after his entrie, and it was thought to be a good feoffement. Like law is it wher the king is intitled but only to the profits as vpon an vtlagarie in a personall accion or vppon the conuiccion of a clerke, in these cases if the partie enter and make a feoffement, or if a stranger that hath title to entre do entre hee dischargeth the kyng of his interest, and of these matters, you shall finde bookes M 8. H. 4. folio. 16. H. 21. E. 3 . folio 1. H. 3. H. 7. fo. 2. H. 10. E. 3. fo. 2. 27. ass. P. 50. T. 9. H. 6. fol. 2. & H. 21. H. 7. fo. 7.

Enterpleder. Cap. xix.

SOmetyme it happeneth that by twoo seuerall offices founde in one countie seuerall persons bee seuerally found heires to one man, whereby for asmuch as the king is brought in doubt to which of them his hyghnesse may make liuery, they therefore must first enterplede, and when by enterpleder the priuitie of the blood is tryed betweene them, then his highnesse ought to make the liuerie to him that is tryed to bee the next heire of him that dyed. As for an example, by one *Diem clausit* or speciall commission in one countie, one is founde heire to hym that dyed the kinges tenaunt and of full age, and by an other *Diem clausit* or speciall commission in the same countye one other is founde heire also to him that dyed and wythin age, in this case the heire that was firste founde shal haue a *Scire facias* in the Chauncery against hym or her that was last founde heire to come and shewe why liuery should not be made vnto him of the lande comprised

in

in the *Scire facias* as heire to him that last dyed seised therof, vppon whiche writ if a *Scire feci* bee returned, and the partie defendant commeth not, or if he come and confesse that hee him selfe is not heire then the plaintif in the *Scire facias* shall haue his liuerie, but if hee come and entytle him by the seconde office, and trauerse the first as he needes must (for thenterpleder must needes rest vpon ẏ firste office, and not vpon the second) then as thissue is founde, so shal he or they for whome it is found, haue liuery. And this appeareth in the newe *Natura breuium* f.262 & P.16.E 4.fo.4. *Trauers*.44.P.36.E.3. Howbeit a great doubte ryseth in our bookes vppon this matter whether the enterpleder shalbee foorthwith after the seconde office founde or not vntill suche tyme as the heire that is found within age commeth to his age, and as it appeareth by the sayde booke of 36.E.3. in this case, where one was first found of full age and after the other within age thēterpleder was foorthwith, for it were no reason that hee that was right heire and of full age shoulde be delayed by the nonage of the other that is no heire. And a straunger shalbee receaued to trauerse the office notwithstandinge, the heire that is founde by the office that is trauersed be within age.

And then it is no reason that the heire in this case bee in worse condicion then a straunger. But take it by ẏ firste office one is founde heire and within age, and by the second office an other is found heire, and of full age, whether in this case they shall enterplede or not, or whether thenterpleder shalbe before thage of the other: And surely it shoulde seeme by the groundes and rules declared beefore vpon the writ of *Diem clausit extremum*, that the secounde office in this laste case is voyde, because there is no better title found for the king than was by the firste, & then if it be voyd, there can be no enterpleder. Howbeit in ẏ new *Natura breuium* f.262. it appeareth to the contrarye

hereof, and that they shall enterplede in this case, & that ỹ seconde office is not voyde, for there the heires founde by bothe offices were of ful age. And yet that notwythstanding they enterpleded. And so is T 5.E.4 f.4. where it is said that if by one office the heire is founde within age, & by an other office another is found heire and of full age, that in this case they shall enterplede, but not before the child come to his full age. And *Townsend* Justice sayeth in P.1.H.7.fo.14. That if by diuers offices ỹ.bee seuerallye founde heires and within age, now the king shal kepe the lands til their full ages, and then they shall enterpleade, and if they dye before enterpleder their heirs within age, seuerall *Deuenerunt* shalbe awarded, that is to say, for euerye heire one, & by the same being founde seuerally heires to their auncestors, they shall enterplede at their ful ages like as their auncestors shoulde haue done if they had lyued, and if the dying of any of them were without issue & the other found to be his heire then is thenterpleder determined. Thus may ye see how bookes vary in this matter, and yet by the waye note this difference, that is to saye, where by the first office the heire is founde within age, & where of full age, for by these bookes it shoulde seeme ỹ if he bee first found within age, notwithstandynge that by another office another is founde heire and of full age, yet hee shall not enterplede with the other till hee bee of age, contrarie it is if the firste be founde of full age, & the next wythin age, and the reason may bee for that the kynge ys first seised of him that is wythin age, with whom the lawe weyes more in presumption to bee heire then with the other, and this tytle is the best title the king hath, for it entytleth his highnesse to a greater benefite then doth ỹ second office, and this second office was found vpon a commission granted more for the kinges benefit then for the heires that should bee founde by the same and therefore it

were

were reason that he that is firste founde heire haue more fauor if any fauor bee to bee shewed that he that was last found heire, or at the least for the kinges benefite that the matter be respited till the chylde be of age.

Also the said Justice *Townsend* saide further, ℣ 1.H.7.f.14. that if one be found heire in one countie & another found heire in another countie, yet they shall enterplede, which cannot be as mee seemeth ℣ 2.H.7.f.12. for once wee haue a generall ground that a man cannot sue a general liuery by parcels but first he must cause an office to be founde in euery shire where he hath lands, & when al the offyces be returned, then to haue his liuery & not before, then in this case where one is found heire in one shire and another in another shire, here none of them both can haue liuery, because he hath no office founde but in one shire and not in the other: and then if there can bee no liuery there can bee no enterpleder, wherfore it should seeme in that case they cannot enterplede. And herewith agreeth the booke in ℣ 8.H.7.f.11. So no enterpleder can bee but where there is an office thorough the whole foūd for euery heir in euery county where ẏ lāds lye ℣ 16.E.4.f.4. but it is not alway requisite ẏ there be seuerall offices found, for sometymes vpō one office found by it self alone there maye bee an enterpleder, & that is where two be founde heires by one enquest, as two twinnes that is to saye, two children borne at a burden T.1.H.7.28. And it is to be noted that euerye enterpleder is to trye the priuitie of blood only, that is to say, which of these that enterplede is nerte heire to him ẏ last dyed seised, and not to trye their rightes in the lands. And therefore if by one office one be found heire of a generall tayle, and by another office another is found heire to the same land as of estate in speciall taile, they shal not enterplede, as it apeareth in H.21.H.7.fol. 36. Also they must bee bothe found heires to him that last dyed, and by

whose death the king did seise: for if one be found heire to him that died seised and another is found heire to the aũcestor that died seised next before the laste diyng seised, in this case they shal not enterplede, as it apeareth in Ÿ.2.Ÿ.6.f.5. Also they shal not enterplede but where bothe heires claim by one self title of lands holden of the kinge, for if ẏ kings tenant dye seised of landes holden of other as well as of the king, & one is found heire to all the lands & by an other office another is found heire only to the landes holden of other, in this case they shal not enterplede, as it appeareth in Ÿ 12.E.4.f.18. for he that is founde heire by the second office cannot haue liuery if thẽtepleder were foũd for him, because he is not founde heire of all as is before remembred. And therefore Ÿ 21.Ÿ.7.f.35. if one be found heire *virtute breuis*, & another is founde heire *virtute officii*, in this case they shal not enterplede, because he ẏ is found heire *virtute officii*, cannot haue liuerie if thẽterpleder did passe wo̲ him: for the nature of enterpleder is to haue liuery for him with whom it is found. And note ẏ notwithstãding an enterpleder is not to trie the right in the land but only the priuitie of bloud: yet the issue tried betweene thẽ shalbe an estoppel afterward in an accion vsed of ẏ possession of ẏ same auncester by whõ they claim, as in *Assise de mordanceſter* or cosinage, as it appeareth in *Estoppell* 255. Ÿ. 4.E.2. And note that as two or more shall enterpleade that clayme as heires, euen so shall any other that clayme not as heires but by some other tytle, if it be so that theyr tytle affirme the kinges possession, as take the case to bee this. Lande holden in chiefe is aliened to dyuers persons at dyuers tymes, and this founde by office the kynge seyseth, and after commeth euery of the alienees and praieth to make his syne and to be restored, now they shal first enterplede & try which of their feffemẽts ought to take place er any of thẽ getteth restitutiõ, as apereth in 43.*li.ass.*p.20

So

So it is if any of them come into the Chauncery without proces & confeſſe thalienation, as it appeareth by the ſayds booke, for by the confeſſion the king is entytled againſte him ỹ confeſſeth as well as if it had ben found by office.

Trauers, Cap.xx.

TRauerſe for goods was at the common lawe, but trauers for landes founde by inquiſition before theſchetors is geuen by the ſtatut made in the 34. yere of E.3.ca. 14. which ſaith in this wiſe. *Item acc, eſt que la ou terres ou tenements ſont ſeiſies en la maine le roy per office del eſchetor conteygnont que le tenant le roy ent fiſt alienation ſauns conge le roye ou que le tenant le roy per ſeruice de chiualer moruſt ſeiſi des terres et tenements auaundits en ſon demeſne come de fee & ſon heire deins age et puis la cauſe certifie en la chauncery et celuy qui terres ſount ſeiſie veigne en la chauncery & voet trauerſer loffice qui ſuit primes pris ꝑ mandement le roy, que les dites terres ne ſoient my ſeiſables ſoyt a ceo reſceu & ſoit le proces maundes en banke le roy a trier & ouſter faire droit.* This ſtatute extends onely to the offices taken *virtute breuis aut commiſſionis*, and not to the offices taken *virtute officii*. And alſo by this ſtatute though the trauerſe were found for the partye, yet myght hee not haue had iudgement till a *procedendo ad iudicium* had bene awarded. And therefore was there another ſtatute made in the 36. yere of the ſaid king the 13. cha. the tenor wherof is this *Pur les greuouſes complaintes queux le roye auer oye de ſon people de ſes eſchetours, et de lour male porte il voet & ordeigne del aſſent auauntdit, que terres ſeiſies en ſa mayne ꝑ cauſe de garde, ſoyent ſaluement gardes ſauns waſte ou deſtruccio Et que leſchetour neyt nul fee de boys, veneſon, ne peſſoun, nauter ryens, mes reſpoigne au roy des iſſues et profites annuels proueignauntes des dits terres ſauns waſte, ou deſtruccion faire. Et ſil face*

face autermẽt, et de ceo ſoit attaint, ſoit retint a la volunte le roy, et rende al heire ſes dammages au treble, a ſa proper ſuite, ſi bien deins age come de pleine age, et eyent ſes amies tanque il ſoit deins age la ſuite pur luy, reſpoignant al dit heire de ceo qui ſerra iſſint recouere. Auxint dauters terres ſeiſies en le mayne le roye par enqueſt doffice pris deuaunt leſchetor teigne meſme ceſt ordinaunce et penaunce deuers leſchetoures. Et ſil eit nul home qui mette challenge ou claime as terres iſſint ſeiſies, qui Leſchetour maunde lenqueſt en la chauncellarye deyns le moys apres les terres iſſint ſeiſies. Et que brieſe luy ſoit liuere de certifier la cauſe de ſa ſeiſine en la Chauncellarie, et illeoques ſoyt oye ſauns delaye de trauerſer loffice ou autermẽt monſtrer ſon droit et illeoques maunde deuaunt le roye affaire ſynall diſcuſſion ſauns attender auter maundement. Et en cas que aſcun veigne deuaunt le chaũceller & monſtre ſon droit per quel demonſtraunce per bones cuydences de ſon auncien droit & bone title que le chaunceller per ſa bone diſcretion & aduis du counſaile (ſil ſemble que il beſoygne auoire counſayle) que il leſſe et baile les terres iſſint en debate al tenaunt rendaunt ent au roy le value ſi au roye appertient en maner come il et les auters Chauncellers deuaunt luy ount faites auaunt ſes heures de lours bones diſcretions, iſſint que il face ſuertie que il ne ferra waſte ne deſtruccion, tanque il ſoit aiudge. Et que les dits eſchetours preignent tiels enqueſtes en les bones villes & per bones gentes & de ceo ouerment, et per endentures affaires enter les dits eſchetours et ceux des enqueſtes come auterſoites eſtoit ordeigne per eſtatutes. Anno 24. E. 3. Et ſi nul eſchetour face au contrarie de ceſt ordinaunce ſuiſdit eit la priſon des ii. ans, & ouſter ceo ſoit reint a le volunte le roy. By the common law before the making of theſe ſtatutes a man had no other remedye to auoide a falſe office but onelye his peticion. Howbeit in T. 24. E. 3. f. 54. *Wilby* ſaieth that if thoffice had bene founde before commiſſioners or anye other than theſchetor, the party ſhoulde haue his trauerſe by thorder of the cõmon law. Perauẽture he may be moued ſo to ſaye

because

because those statutes geue a trauerse only to offices foūd before theschetors, making no menciō of any offices foūd before any commissioners. Also before these statutz if after liuery or *Ouster le maine* sued, there had been a newe office found wherby the king had ben entitled to reseise, & ther-vpon a *Scire fac.* according to the statut of Lincoln against the ptie ẏ had pursued the liuery or *Ouster le maine* to come & shew why the land should not be reseised, the ptye in the *Scire fac.* might haue trauersed the office ẏ was so newelye found, as I shal more plainly declare when I come to the place C.26.fo.80. Also *Bab.* saied in the eschequer chamber before al the Justices *Trauers* 47.An.8.H.5. ẏ these statuts that geeue trauerse are only to be vnderstande where the king is entitled to ẏ land but for a tyme, as for wardship, alienatiō wout licēce & such like. But if his highnes be entitled to the fee simple or the freehold, there he ẏ is put out by ẏ office shal not haue his trauerse, but is put to his peticiō *Tamen quere*, for though the first statut be thus as *Bab.* hath sayd, yet ẏ second is not, but general, & therfore may be extended to all offices what matter soeuer they cōtein, as appeareth *Trauers* 37.H.19.R 2. where it is founde ẏ one had encroched vpon the kinges demeines whiche office in deede was false, for ẏ the thing supposed to bee encroched was parcel of his manor that was so presented, & no parte of the kinges demesnes: in this case the partye being putt out of ẏ parcell of grounde by theschetor was receiued to trauerse thoffice, & yet thoffice entitled the king to the fee simple. Also those statuts seeme not to geeue trauerse but to him ẏ is put out of possession by the office. But the statute of 8.H.6.ca.16. aloweth any trauers pfered by hym ẏ feleth himself greued by any suche enquest, althoughe hee bee not put out of possession by theschetor. And the statute seemes also to allowe trauers of an office taken aswel before cōmissioners as before the eschetor. Howbeit that statute geueth no trauers but only maketh therof a rehersal.

These

Theſe ſtatutes that geue the trauerſe ſeme to offer it gene-
rally to any man that will deſyre it, or ẏ doth put challẽge
or claime to the landes wherof he is put out by any office.
Howbeit the expoſition hath ben otherwiſe ẏ is to ſay, that
his challenge or claime muſt be ſuch as ẏ law wil admitt
& allow, for euerye man cannot trauerſe ẏ woulde or that
maketh his challenge or claime: for theſe ſtatutes are intẽ-
ded where ẏ king is entitled by office only, for if his high-
nes be entitled by another record beſide the office, & enty-
tled as it were by a double mater of record, the pty ſhal ne
uer haue his trauerſe. As take the caſe to be this, a man is
attainted of treaſon by act of plement or otherwiſe by ver-
dit, & afterward it is found by office ẏ the ſaid pſon attain-
ted was ſeiſed day of the treaſon cõmitted of certein lãdes
which in dede were neuer his lãds but myne, in this caſe if
I be put out of my lande by this office I cannot trauerſe it
Cauſa qua ſupra, & yet I am a ſtranger to this record as ap-
pereth in 40 aſſ. 24. P 49. E. 3. 11. M. 10. H 6. 15. M. 4. E. 4. 2
& 2. T. 14. E 4. f. 7. But if there be no ſuch record of attain-
der I ſhalbe receiued wel ynough to trauers the office ale-
ging firſt to enure me to a trauerſe that there is no ſuch
recorde of attainder as appeareth in P. 4. H. 7. fo. 7. Alſo
he that is found heire by office ſhall not trauerſe the ſame
office that ſo fyndeth him heire (if that parte of the office ẏ
concernes the tenure in chief be true (although the reſt of
the office be falſe: & therefore if the kings tenant dye ſey-
ſed his heire being of ful age, & by a falſe office the heire is
found within age, in this caſe, he cannot trauerſe this of-
fice as apeareth T. 5. E. 4. 3. And the reaſon of it is becauſe
the heire cannot falſifie the office ẏ he himſelf is to affirm
by his liuery when hee ſhall ſue it. For thoughe hee wo-
ulde cauſe another office to bee founde accordinge to the
trouthe of the matter, yet it were not to the purpoſe
to helpe hym, for the beſte office ſhalbee taken euermore
for the kinge, ẏ is to ſaye, that that geeues hys hyghneſſe

moſt

vic ſta. 1° 2 E6. cap. 8 Remedye c oxe,

moſt auantage, & the heire dziuen to ſue his liuery vpon ẏ office only, foz ſeing the king is bound by an office as wel as is the heire, it is reaſon if any be better foz him than other ẏ he be bound to ẏ onely, & not to the other, & the lawe pzeſumes the one office to be as true as thother, vntil ſuch time a trial therof be made, which tryall cannot bee by the heire, foz he is bound as I ſaid befoze by the office that is found wout any further choiſe, hauinge no pzerogatiue in ſuch matters, & if he ſhould bee receaued to his trauerſe in this caſe, then vpon the trauerſe found foz him he ſhoulde haue the lands out of the kinges hãds bẏ an *Ouſter le main* wout any liuery ſuing, as lands that the kinge ought not to haue ſeiſed, which were incõueniẽt. Foz euery way the king ought to haue ſeiſed thoſe lãds againſt any ẏ claimeth to be heire vntil ſuch time as liuere be ſued thereof. Lyke law is it where ẏ kings tenant dyeth ſeiſed of land in dyuers coũties his heire being of full age, & in one county ẏ ſame heire is founde wĩn age, & in another countye hee is founden of ful age, in this caſe ẏ heire ſhal not trauers the office ẏ found him wĩn age *Cauſa qua ſupra*: foz then foz ẏ lands in one countie he ſhould haue thẽ out of the kinges hands wout any office oz liuerye ſuing. And this caſe appeareth in *Trauers* 39. H. 32. H. 6. But if an office fynd ẏ my father held his lands of the king in chief by knightes ſeruice wherein deede he held not of him in chief, in this caſe I ſhalbe receiued to trauerſe this office. Foz if I ſhoulde ſue my liuery vpõ ẏ ſame, I ſhould be concluded euermoze after to ſay, but ẏ the lands were holden in chief of ẏ kig & foz ẏ cauſe I ſhalbee receiued to my trauerſe as euerye ſtraunger ſhalbe in the like caſe: foz if my trauerſe be true then can the king haue no cauſe to ſeiſe thoſe lãds & therefoze not like the caſes befoze remẽbzed, as appeareth M. 1. H. 7. fo. 3. & 28. The wozds of the ſtatutes be that he whoſe lãds be ſeiſed ſhal trauerſe oz he ẏ putteth challẽg oz claim to the lande ſo ſeiſed. Theſe wozds be not ſo generallye vnder-

vnderſtand as they bee ſpoken, for moſt men vnderſtãde them that he that will challenge or claime but a terme of yeres only ſhal not be receiued to his trauerſe where the king is entitled to the free hold by thoffice, as where it is found that the kinges tenaunt is ſeiſed of certein landes & is dead without heire whereby the landes ought to eſchete to the king, commeth one and ſaieth that he is tenaunt for terme of yeres of theſe landes of the demiſe of a ſtranger without that that he that is ſuppoſed to bee the kynges tenaunt was euer ſeiſed of theſe landes this trauerſe lyeth not in his mouth: for hee that hath but a chattell ſhall not be receiued in any caſe to falſifie the recorde that geueth any man intereſt in the freeholde although he be a ſtraunger to that recorde. Contrarye lawe is it of him that hath a free holde or inheritaunce in the land, for they ſhal trauerſe the recorde in ſuch caſe. Like law is it where ỹ king is entitled but to the wardſhip of the heire of his tenaunt he that is fermer of the demiſe of a ſtranger ſhal not trauerſe his office althoughe the king be not entytled thereby to any freeholde, for it was not the mynde of the makers of theſe ſtatutes to help them that claime but chatels which are accompted in law as nothing, becauſe they periſhe and abyde not. *Et de minimis non curat lex.* Howbeit learne what the lawe will in theſe caſes, for I haue ſeene no bookes of thē. The lorde in title of wardſhip ſhall trauerſe the office, and yet he claimeth but a terme of yeres in the lande, as where it is fonnd by office that ſuch a one helde lands of the kinge in chiefe and dyed his heir wǒin age where in deede he holdeth no ſuch lande of the kynge but only of me by knightes ſeruice, in this caſe, I that am lord ſhall trauerſe this office, that is to ſaye, ſhewe howe they be holden of mee by knightes ſeruyce wythout that they be holden of the king, as appeareth in M. 1. H. 7. 3. For there it toucheth the lordes inheritance in ỹ right of his

his ſeignozie & becauſe he by the falſe office is to loſe ẏ p-
fit that is pzeſently fallen by reaſon of his ſeignozye, it is
reaſon he be receaued to trauerſe ẏ office. But if hee were
but lozd in ſocage he ſhoulde not bee receaued to his tra-
uerſe, becauſe he therby can make no title to the warde-
ſhip of the body, & landes of the child, foz it is a good gene-
rall ground if the king be once ſeiſed, his highneſſe ſhall
retaine againſt all other that haue no title, notwithſtan-
ding it be founde alſo that the kinge had no title but that
the other had poſſeſſion befoze him, as appeareth in 37.li.
aſſ.pl.11. where it was found that neither the king noz the
party had title, and yet adiudged that the king ſhould re-
teine, foz thoffice that findes the kinge to haue a right oz
tytle to entre, makes euer the king a good title although
it be falſe, & his highnes therby may take poſſeſſion againſt
any other that is ſeiſed of the lands, & reteyne vntill ſuche
time as thoffice be trauerſed by him that hath title & tried
to bee a falſe office. And therefoze no man ſhall trauerſe
thoffice vnleſſe he make him ſelfe a tytle. And if hee can
not pzoue his title to be true although he bee able to pzoue
his trauerſe to be true, yet this trauers wil not ſerue him.
As foz an example, it is found the kings tenant died ſey-
ſed of certein lands ẏ he held of the king in chief, his heire
being within age where in deede he had made a feoffemēt
in his life tyme to another of thoſe lands, it is no trauerſe
foz ẏ feoffee to ſay hee dyed not ſeiſed, but hee muſt firſte
make him ſelfe a title by the feoffement: & foz aſmuch as it
is found ẏ the landes are holden in chiefe, if he will make
his title good againſt the king he muſt ſhewe fourth a ly-
cence of alienaciō oz a diſpēſaciō therof, oz els he muſt tra
uerſe the tenure in chief as wel as he ſhal do ẏ reſt of thof-
fice, otherwiſe his title is not good as appeareth in p.36.C
3.*Trauerſe* 44 & 46.*Liuery* 18.p.36.C 3 f 4 p 3.H 4.14.& H 3 h
7.f 14. holbeit *Huſſey* holdeth opiniō T 1 h 7.28. ẏ no man
may tra-

trauerse the tenure but the lord or the heire, vnlesse his tytle be found by office, but whether the law be so or not lern, for as I take it the lorde & euery stranger that hath a title against the king, makyng his title shal trauerse the office before his tytle be found by office: for when the trauerse is found for the party his title now appeareth of record, & by the trauerse found, the office which was the kings title is vtterly destroyed and gone, so that now the king is not to make any liuerye of the lands to any person but onely to amoue his handes from the same, with the meane issues & profits as one ẏ had no cause to seise them. And therfore euery man may enter now that wil if he haue right or tytle of entre to the lands, for the king deliuereth thē to no pson certein but only riddes his owne hands of thē as hee ẏ had neuer seised them, but otherwise it is where ẏ kyng is to make liuerie, for there his highnesse must bee enformed certeinly by matter of record who shalbe his tenant & who it is ẏ ought to receiue the liuery at his hands leaste his highnesse be deceaued in thadmittinge of his tenaunt, which is & ought to be a great matter toward the lord, and therfore the cases be not lyke, wherfore I think a mā may trauerse by force of the statutes wͤout hauinge their tytle first found by office: & so be our books P 36. E. 3. *Trauers* 44 M. 12. E. 4. f. 18. P. 16. E. 4. f. 4. & 43. *li. ass.* P. 20. Howbeit *Trauers* 45. T. 5. E. 4. f 5. seemes to way to ẏ cōtrary hereof, & P. 12. H. 6. also, where it is said ẏ if it be found ẏ the kings tenant died seised where in dede he was ioyntly enfeoffed wͤ me, now cā I not trauerse this office except another office were found for me. But cōtrary law should it be if I had bene found by the office iointenant wͤ him for terme of life, where in deede I was iointenant wͤ him in fee simple, in this case I may trauerse thoffice, because menciō is made of me in the said office, this boke case admitted to be law, yet it varieth frō ẏ case before remēbred of ẏ strāger

that

that trauerſed thoffice, for here thoffice is true, and when it is found by office that he died ſeiſed, this may be although the ſaide dyinge ſeiſed were ioyntly with an other, for any thing that is expreſſely found to the contrary, and then the king here is to admit an other tenant, as in the caſe of the liuery, before whom as yet hee hathe no credible informa-tion, that is to ſay, by matter of record, and then it is like to the caſes of tenant by the curtiſie, tenaunt in dower, and the deuiſee which in no wiſe cā be admitted to their eſtates vnles mention be made of them in the office or ſome other office or matter of record foūd for thē, as appeareth in *P.9. H.7.f.24. Briefe* 618. *P.46.E.3. & M.11.H.8. Deuaunt fo.17.* and for none other reaſon as I gather it, but only for ẏ thoffice is true, & they are to be admitted ẏ kings tenants which cā not bee but by information by matter of record, *Vt ſupra.* Thē let vs reſort to the place we were at before: ẏ is to ſay, no mā may trauerſe with the king, vnles he make him ſelf a good perfit title, as to ſay ẏ the tenant which is ſuppoſed to die ſeiſed did infeffe him, or ẏ a ſtranger was ſeiſed & did infeff him, wout that, ẏ he died ſeiſed. And ſo note by ẏ way ẏ he may cōuey his title as wel frō a ſtrāger, as from him that is ſuppoſed to die the kinges tenaunt, as appeareth in *P.36.E.3. Trauers* 44. & whē he hath made thus his title, thē he muſt trauerſe ẏ kings title, which is thoffice, for it is not enough for him to reſt vpō his own title, although it be ne uer ſo ſtrong, without anſwearing the kings title, yea al-though it were good againſt a comon perſon, yet againſt ẏ king it is not ſo wout trauerſing ẏ office. And therefore if he wil ſay ẏ his tenaunt in his life time did leuy a fine vnto him of theſe landes, *Sur conuſaunce de droyt, come ceo quil ad de ſon done*, by vertue whereof he was ſeiſed, vntill ſuche time as he was put out by this office, and praieth reſtitutiō this is no ple againſt the king, and yet this matter were a good plee in *Aſsiſe of Mortdaunceſter* brought by the heire,

for in that case he shoulde bee estopped by this fine, whiche is executed to say the cõtrary therof, that is to say, that his father died seised without shewinge how his father got the possession againe since the time of the fine leuied. But it is no ple against the kinge, for the kinge cannot be estopped, namely in this case, being a straunger to the recorde. And also the statut geues a trauerse, and by this maner of pleadinge he taketh no trauerse. Like lawe is it, if it be founde by office, that the kinges tenaunt in chiefe infeffed ons B. without licence comes one D. and saithe, that hee died seised, and his heire entred and infeffed him by the kinges licence, this is no plee without trauersinge the feffemente made to B. & yet against any comon person it were a good plee, but not against the king, for his title must be answered fully: and that is the feffement, & these cases appere in *Trauers* 17. *P.* 46. *E.* 3. *fo.* 43. *li. ass. p.* 20. Also it is not sufficient to trauerse one of the kinges titles, but hee muste trauerse them al, for though the kinges title that he is seised by, bee founde not good, yet if there be any other recorde that makes the kinge a title whereby hee maie retaine the landes, the party must auoid also that title, or els he gettes no *Ouster le maine M.* 9. *H.* 4. *f.* 7. but learne if there be no suche recorde in *Esse*, or being at the time of the trauerse tended, and hanging the ple vpon the trauerse a new record, that is to say, an office is founde which entitleth the king whether in this case the party shall bee driuen to trauerse this office or not ere he haue his *Ouster le maine*. And it seemeth he shall not: for so he might be delaied of his possession infinitely by finding one office after an other, wherfore this office foũd, hanging the trauerse shalbe accompted in lawe as though it had bene found after the party had had his *Ouster le main*, in which case then the party vpon the firste trauerse founde for him, shall bee restored to his possession by an *Ouster le mayne*, and then after vppon a *Scire facias* sued agaynste him

him to shew why these lands should not be reseised, vppon this new office found for the kinge, he shal bee receiued in that *Scire facias* to trauerse this new office. Howe be it this auantage he winnes hereby, that is to say, he then trauerseth with the king, kepinge stil his possession, where els he should trauerse being stil out of possession. And this case ye may find T.11.H.4.f.80.& M.13.H.4.f.8. Thus may ye see whē a man trauerseth with the king, he must trauerse al ȳ kings titles that haue thē their being by matter of record, & is not boundē any further to answere for that time. Then let vs see how the king shal reply vnto this trauerse: and in that it is to be noted, that ȳ king hath a prerogatiue that a comon person hath not, for his highnes may choose whether he wil mainteine the office, or trauerse the title of the party, and so take trauerse vpon trauerse, or when all his titles bee trauersed, his highnesse may choose to mainteine them all, or els but one of them M.13. E.4. fol. 8. But then note, that if he mainteine but one, that is to saye, take issue but vpon one which is found with him that tended the trauerse. In this case the partye shall haue his *Ouster le maine*, notwithstanding there be no issues taken vppon the other title H.4.H.7.f.5. but whether the kinge shal euer take auantage of thother titles after or not, this is to be sene: & I thinke hee shoulde, for thoughe the other titles shall not in this case lett the partye of his *Ouster le maine*, yet it seemes the kinge may call the party againe by a *Scire facias* to answeare his other titles, or els his highnesse to reseise, as I saide before, for no *Nient dedire* can preiudice the kinge, *Nec tacita renunciatio*, like as it maye doo a common person. And therefore seinge he did not renounce his other titles openly nor expressely, it seemethe his highnesse by his prerogatiue shall haue aduauntage of them at anye other tyme, when it shall bee his pleasure. And these cases yee maye see M.9. Henrye 4.fol.6. Howe be it it appereth in ȳ

saide booke of H.13.E.4.f.8. that after the king ioyneth an issue vpon a trauerse, his highnes cānot in an other terme waiue this issue and take a newe, for so the party might be delayed infinitely of his right, whiche should be as it were a wronge committed vnto the party, and the kinge by this prerogatiue maye do no man wronge: but after issue ioyned he maie demurre in law, and waiue the issue, for there is no matter chaunged, but the olde remaineth, H. 3. E. 4. f.26. And by the demurrer the lawe presumeth that the issue was ioyned, and so might be a Ieofaile, and therefore his highnesse may demurre in lawe after issue, but not chāge his issue, and take a newe. And note that if the partye take a trauers which is iudged insufficient in the lawe, this is peremptory vnto him, and he shal not be receiued after to take a newe, as appeareth in 40. ass. 24. Yolwe be it T.14. E.4. the contrary opinion is holden, and that it is not peremptory, because it procedeth in the Chauncery, whiche is the Courte of Conscience. But as to that a man maie answeare and saie, that a Chauncellour hathe two powers, the one absolute, the other ordinarie, and this trauers is before him by an ordinary power, in whiche case al things touchinge the same must procede as it should before any other ordinarye Iudge of the common lawe, and therefore it should appeare by a booke in H.4.H.6.f.2.& H.11.H.4.f.25 H.22.E.4.f.9. *Trauers* 12.*H*.3. *H*.7. that if the party be nonsuit in this trauerse, it is perēptory vnto him, for so might he delay the kinge infinitely, *tamen quere*: and learne whether one maye proceede with a trauerse, the heire beeinge within age, or els shal tarry til he be of ful age, for ỹ booke is in T.5. E.4. f.5. that hee shall tarrye till the heire commethe to age. But in this question one may make this distinction, that is to saye: Whether the trauerse be tended by a straunger, or by the heire (for sommetimes it happeneth, that the heire shall trauers as well as a straunger.)

For

For no more then a ſtranger can haue *Ouſter le main* without trauerſinge all the kings titles, no more maie the heire haue liuerye without trauerſinge all his titles, and then if the trauerſe bee to bee taken by the heire, hee ſhall not bee thereunto admitted, vntill hee bee of age, becauſe that beefore that time he hath no cauſe to haue his liuery. But that reaſon ſerues not where the trauerſe is to bee taken by a ſtraunger, and therefore it ſhoulde ſeeme that he ſhoulde haue it by and by: For he hathe cauſe to haue an *Ouſter le maine* forthewith, and that with the meane iſſues and profites, and therefore it were no reaſon that the nonage of a thirde perſon ſhould hinder him, with whome hee is not to pleade, or to trye any righte but onely with the Kinge.

For if the child haue right, hee may enter vpon the ſtraunger after hee hathe his *Ouſter le maine*, and trye his righte with him: and ſo at no miſchiefe. And note as I ſayde beefore, that the heire muſt trauerſe all the kings titles ere he can haue liuerye, and that whether the Kinges title bee in his owne righte, or in the righte of an other, in hys owne righte, as if there bee a recorde that prooues his lande to bee aliened without the kinges licence, or that thaunceſter of the enfant that would ſue his liuery, was but tenant for terme of life, the reuerſion to the kinge, and hathe made a feffement to the kings diſheritaunce, or ſuche like, in theſe caſes notwithſtanding the Kinge did not ſeiſe by vertue of theſe recordes, but onely by vertue of the office, whiche founde thaunceſter of the infant died ſeiſed the Kinges tenaunt in chiefe of eſtate in fee ſimple, yet the heire geatteth no generall liuery vppon that office, vntill ſuche time as he hathe auoyded theſe other recordes. And if he haue it beefore, it is a cauſe of reſeiſer. So is it where the Kings title is in righte of any other, as if one be founde heire by office, and after by an other office an other is founde heire

of the same landes to the selfe same auncestor, in this case he that was firste founde heire cannot haue his generall liuery, vntill suche time as he hathe destroied the other title, either by an enterpleader, or a trauerse, for if it so come to passe that he cannot enterplede, then muste he trauerse, or by some other meanes auoyde the recorde ere hee can haue his saide generall liuerye, as if he sue his generall liuerye otherwise, it is then missued, and a good cause geeuen to the kinge to reseise. And this enterpleder or trauerse betwene them that claime as heires, is by the order of the comon lawe, and not by statut, and can neuer bee, but where bothe theire titles be founde firste by office, and the reason is, because that as soone as the matter is discussed betwene them, hee for whome it is founde shall forthwith haue his generall liuerye, whiche he can neuer haue, if his title bee not first found by office: & therfore not like the case where a stranger trauerseth with the king, that is, to haue but an *Ouster le maine*, for there the kynge had no righte to seise, and therefore his title neede not to bee founde by office, as I haue saide before. But in the other case who so euer shall claime the land as heire, his highnesse hath right to seise in the righte of the saide heire, and to haue his primer seisine or wardship as the case doothe require. And therefore his title muste be firste founde by office: but where one heir is to trauerse with an other heir during the kings possession, this shall not be, vntill hee that is firste founde heire by the office come of age, because vntill that time the lands ought to remaine in the kings handes, and then he to haue liuery: but whether he that was first found heire should tarry for thage of him that was last found heire, I haue saide my minde therein before in the title of Enterpleder cap. 19. But where a straunger is to trauerse, hee shall not tarrye for the age of the heire for the causes beefore remembred.

And

And so there appeareth to bee a greate difference betwene a trauerse taken by him that is a straunger, and by hym that is heire. But at this daye moste liueries that bee sued, are speciall liueries, whiche conteine in them selues a pardon, and therfore the missuing of them is dispensed withal by the wordes of the pardon conteined in the sayde liuery. And so manye of these thynges that I haue spoken of beefore are not muche to be obserued, if the lyuery, or *Ouster le maine* bee not generall. (For I see no let, but that an *Ouster le maine* may bee graunted specially, as well as liuerye) And laste of al it is to be noted, that this trauerse ertendes not to euery recorde that entitleth the kinge, but onely to suche recordes as be trauersable, as an office, or suche like, as I shall shewe my minde therein more fullye in the chapter of Petition. Other trauerses there be whiche be trauerses by order of the common lawe. And not by anye statute, as trauerses vppon enditementes or presentmentes, whereof I intende not to intreate in this place, amonge whiche trauerses there is also by order of the comon lawe a trauerse concerninge goodes and cattelles of persons attaynted, for the whiche a man shall trauerse with the kinge, althoughe his title thereunto bee by double matter of recorde. As take the case to bee, a man is attainted of treason, or felony, or outlawed in a personall action, and after by office it is founde that hee was possessed of a horse or anye other goodes as his owne proper cattell, where in deede they bee the goodes of a straunger, in thys case the sayde straunger shall trauerse thys office with the kings. 9. 4. E. 4. folio 24. 9. 13. E. 3. fo. 8. & 9. 47. E. 3. f. 26. So is it, if it bee founde by office, that a man outlawed in a personal action, is seised of certaine landes, whiche in deede are my landes, and the escheator by force of that false office takes the profites: In this case I maie disturbe him

without trauersinge thoffice. And this case appeareth T.9. H.6.f.20. Then further. The wordes of the saide statutes of anno 36. bee, that if any comme before the Chaunceller and shewe his right, whereby it may appeare by good euidence that he hathe an auncient righte and good title, then the Chauncellor shall lett the saide landes to the party that tendeth the trauerse, yelding to the king the value, if it bee aiudged for the king in maner as hee and the other Chancellour haue done before him by their good discretions, so that hee to whome it shal be letten, finde suertye to doo no waste or destruction before the trauerse be discussed. By the wordes of this statute it should appeare that the Chancellours before this tyme by theire discretions had vsed to let the landes to the party to ferme, and that is true, for the kinge vsed so to doe vppon a petition whiche was made to his highnesse by the order of the common lawe in steede of a trauerse nowe vsed, as appeareth H.5. E.3.f.6. and therefore I think his highnesse may do so at this day both vpon a petition, and a *Monstraunce de droyt*, althoughe the statute make no mention thereof, for so it was vsed to doo by order of the common law, as it appereth by the booke before. And of this matter see *Trauers* 12. *H.* 3. *H.* 7. Nowe is this statute amplified and made plainer in this pointe by the statut made in the 8. yere of H.6. the 16. chapter, whiche wil that no lands or tenements seised into the kings hands vppon enquest taken before Eschetours or Commissioners bee in any wise graunted or letten to ferme by the Chancellor or Treasorer of England, or any other the kings officers, till the saide enquestes or verdits be returned fully into the Chauncerye or Eschequer, but all that time shall abyde in the Kynges handes, and by a monethe after the sayde retourne, if it bee not so, that hee or they that feele them selues grieued by the said enquest, or that are put out of their

of theire landes and tenementes come into the Chauncery and offer to trauerſe the ſaide enqueſtes, and to take the ſaid lands or tenements to ferme, whiche if they doo, then the ſaide Chaunceller, Treaſorer, and other officer ſhal let them haue them to ferme, ſhewinge good euidence, prouinge theire trauerſe to be true accordinge to the forme of the ſtatute of anno 36. Ed. 3. to holde till the iſſue vppon the ſaide trauerſe taken, be found and diſcuſſed for the king or els for the partye, and alſo findinge ſufficiente ſuertye to purſue the ſayde Trauerſe with effecte, and to render to the kinge the yearely value of the tenementes whereof the trauerſe ſhall bee ſo taken, if it be diſcuſſed for the kynge. And if any letters patents of any landes or tenementes be made to any other perſon to the contrary, then the ſame to bee voyde after the monethe. Hereuppon it is to be noted, that the ſhewinge of the euidence is onely rehearſed to the letting of the landes to ferme, and not to the trauerſe. For by this ſtatute hee maie trauerſe without ſhewinge anye euidence, but not haue the landes to ferme. Alſo by theſe ſtatutes he is not bounde to no certaine time for takinge of his trauerſe, but only for taking of the landes to ferme, for hee maie tende his trauerſe when hee will, ſo he deſire not the ferme of the landes. But if hee will haue them to ferme, hee muſte tende his trauerſe within the moneth, as appeareth P. 13. Edward 4. folio 8. and nowe by the ſtatute of anno primo H. 8. chapter 16. hee hathe three monethes libertye to doo it. Alſo note the thinges that hee muſt finde ſuertye for, that is to ſaye, to ſue it with effecte, to paye the rente after the trauerſe bee diſcuſſed, and to doo no waſte or deſtruction. In this word, Kent, is emplyed all the arrerages of the rente that ſhall incurre meane betweene the taking of the ferme, and the diſcuſſinge of the trauers, and yet it is not ſo expreſſed. Alſo the leaſe that is made to hym

that

that tendes the trauerse is not of anye terme certaine, but onely by these wooꝛdes, *Donec discussum fuerit*, foꝛ the wooꝛdes of the statute bee so, and theꝛefoꝛe as soone as the trauerse is founde againste hym that tendeth it, by and by the lease he had in the lands by foꝛce of the statut, is voyde, without anye further pꝛoces, as appearethe in Ꝑ. 4. Edwarde the 4. folio 29. Howbe it foꝛ as much as the wooꝛdes be, to holde till the issue vppon the saide trauerse taken be founde and discussed foꝛ the kinge, oꝛ foꝛ the partye, I would learne if the partye be nonsuit vppon his trauerse, oꝛ that the trauerse bee adiuged againste him vppon a demurrer in lawe, whether the lease should be voide oꝛ not, like as it shal bee vppon the issue founde. And it seemes it shall bee by the wooꝛdes compꝛised in the saide statute of anno 36. Edwarde 3. But not by any wooꝛdes compꝛised in the saide statute of anne 8. Hen. 6. Foꝛ the wooꝛdes bee, *Tanque il soit adiudge*, and therewith agreeth the booke in Ꝑ. 4. Ꝑ. 6. folio 12. Also note, that befoꝛe this statut of an 8. Ꝑ. 6. the kinge did vse to graunte the custodye bothe of the landes and bodye to anye other, to whom hee would after office, and befoꝛe anye trauerse tended, and this graunte was good, because it was not then restrayned by anye statute. Howe be it, vppon the trauerse tended, a *Scire facias* shoulde haue bene awarded against the patentee, compꝛehending in the same all the trauerse. And if hee had beene returned warned, and came not, his patent had ben voide *eo facto*, as appeareth in the saide booke of Ꝑ. 4 Ꝑ. 6. fol. 12. at least wise foꝛ the lands, and yet there was then no estatute that made them voide, *quod nota*. And then by and by they should haue bene letten to ferme to him that had tended the trauerse. But now whether since ỹ makinge of the saide statute of anno 8. Henry the 6. a *Scire facias* shall bee awarded againste the patentee vppon a trauerse, learned

foꝛ

for the saide statute makes suche lettters patentes void for the grant of the landes, but not so for the body, and therefore it seemes a *Scire facias* shal bee still awarded, and the graunte also of the saide landes is not voide, till after the moneth. And nolwe by the saide statute of añ 1. Henry 8. not till after three monethes, and so it should seeme by the booke of P.5.E.4.fol.3. M. 14. E.4.fol. 1. H. 8. H.6. folio 17. that a *Scire facias* shall bee awarded at this daye notwithstandinge the statute of 18. Henry 6. ca.6. whiche ordeines that all letters patents made before the kinges title found by inquisition returned into the Chauncery, or other matter of recorde, shal be voide. For that statute also extendes but to landes and tenementes no more then the other statutes doo, so that the graunte of the bodye, or of any other thing whiche is no lande or tenement, is good at this daye before any office or inquisition therof found. And it is further to be noted, that this statute of añ 18. Henry 6. makes not suche letters patentes good for any time whiche hee graunted, contrary to the tenure of that statut, but they be voide forthewith. And learne and enquire if at this daye within one moneth, or three monethes after office found & returned to the maister of the kings wards & liueries with aduise of one of the counsell of the kinges court of wardes & liueries made a lease of the wardes lands, or of an idiots landes beeinge in the kinges handes for the time of the kinges interest in the same, and after within the time appointed by the statute comes a stranger and trauerseth the office, whether in this case he shal haue the landes to ferme or not. And it seemes that no, because this statute ý geeues that power to the maister of the kinges wardes, was made longe time since the statutes of añ 8. or 18. H. 6. that is to say, in the 32. H. 8. c. 40. whiche statute is generall, and no sauing or exception made of the other statutes before.

And

And then it is a generall rule, *Quòd posteriores leges priores contrarias abrobant*. And somme thinkes at this daye for wardes landes, or Ideots landes there shal be no letting of them to ferme to him that tended the trauerse, if thei were lette before the trauerse tended by the maister of the Kinges wardes, but of other wardes it remaines as it was before the makinge of this statute of annō 32. H. 8. And note, that if the Kinge seise not for any wardship, but onely for primer seisine, because the heire is of full age, if a straunger in this case wil trauerse, it is to litle purpose. For if the king by and by after will make liuery to the heire, the trauerse is become voide, as appeareth T. 1. H. 7. f. 27. for the king in that case hathe no cause to reteine the lande, but to deliuer the same to him, in whose right he seised beynge able for it, and he that tended the trauerse is at no mischiefe, for he maye nowe after this liuerye pursue for his remedy against the heire, and if it should tarry in the Kinges handes for the trauerse sake, his highnesse should then haue al the profits, if the trauerse were founde with him for all the tyme that the sayde trauerse dyd depende, whereunto hys highnes hath no right, but onely the heire, and therefore it seemes there shall bee no trauerse but where the lande is to abyde in the Kinges handes for a certayne tyme, as for wardeshippe, fine for alienation, or suche lyke. But if hee that tended the trauerse bee founde heire by office, and is to haue liuery of that lande, as well as the other that was firste founde heire, otherwise it is for the reason made beefore. And so of an enterpleder. For in that case the king is bounde to make the liuerye to him that is tryed rightefull heire, but not so in the case of a trauerse tended by a stranger, which claimes not as heire, for hee is to haue no liuerye, but onely an *Ouster le maine*, by whiche *Ouster le maine* the king delinereth nothing, but leaues his own possession

as

as one that hathe no righte to keepe the possession any longer. And it appeareth sufficiently, that hee hadde no righte to keepe it, after the time the heire that shoulde haue it was of full age. Wherefore a straunger in that case cannot trauerse, for so two that hadd no righte, by trauersinge together might kepe the thirde that hath right from his possession: which was neuer the meaninge of the makers of the said statutes. And notwithstanding that this booke T. 1. H. 7. f. 27. be that after the trauerse, & before the ferme graunted the liuery was made, yet that makes no difference, for whether the ferme were graunted before the liuery, or after when the trauerse is become voide by the liuerye, the ferme which dependeth vpon the same is also voyde, as me seemeth. And note also that the sayde statute 1. H. 8. ca. 10. whiche geeues three monethes for hauinge the landes to ferme makes no mention of the treasorer of England, but onely of the Chaunceller, so that for any thinge that is to bee letten by force of that statute, it must be done onely by the Chancellor, and not by the Treasorer: as it should seeme, as wel of offices returned into the chequer, as into the Chauncery, and therefore within the moneth after an office returned into the chequer, the Treasorer may let the lands to ferme to him that tendes the trauerse accordinge to the saide statute 8. H. 6. But if it be to lette after the moneth, the Chaunceller of England muste do it as it shoulde seeme. And note also that by a statute made anno 1. Hen 8. cap. 12. Any person that sued his liuery in time of king H. 7 vppon any office that founde he helde in chiefe, where in deede he held not in chiefe, which saide offices were founde by the procuremente of *Empson* and *Dutley* in the time of the said late king, may trauerse thoffice in like maner and forme as he might haue done before the liuery sued, if it bee so that he be nowe seised of ỹ same lands, sauinge ỹ he shal

not

not be reſtored to the mean iſſues and profits. This ſtatute ſeemes not to extend to the parties heires that had iuery, but onely to the party him ſelfe. *Quere hoc.* And note that in the court where thoffice is firſt returned into, there I ſhal tend my trauers: as if it be returned into the Chauncery, then in the Chauncery, and if in the eſchequer, then in the Eſchequer, as in deede al offices *Virtute officij* are returnable in the Eſchequer onely, and ſuch as be *Virtute breuis vel commiſſionis*, be returnable in the Chauncerye. M. 4. E. 4. f. 24. And now by the ſtatute of 33 H. 8. cap. 22. No Eſchetor maie ſitt, *virtute officij* only to finde any office of landes holden of the kinge of the value of v. li. or aboue, vpon payne to forfeite v. li.

Monſtraunce de droyt. Cap. xxi.

THe ſtatute of anno 36. E. 3. that geeueth a trauerſe, ſaith in this wiſe: *Et ſil eit nul hõe qui met challẽge ou claime as terres iſſint ſeiſies que leſchetor maunde lenqueſt en la chancellary deins le moys apres les terres iſſint ſeiſies, & q̃ brief luy ſoit liuere de certifier la cauſe de ſa ſeiſin en la chãcellary, et illõq̃s ſoit oye ſauns delay de trauerſer loffice ou autermt mõſtrer ſon droit, et illõques maũde deuãt le roy affaire final diſcuſſion ſans attẽder auter maũdement.* This ſtatut ſpeakes both of trauerſe and *Monſtraunce de droyt* diſiunctiuely, wherby a man may gather, that if *Monſtrance de droyt* were not by the order of the comon lawe, as it is ſaide H. 9. E. 4. f. 52. & H. 13. E. 4. fol. 8. that it is: yet were it geeuen by this ſtatut. And no booke that bears date before this ſtatut can I finde that treats any thing of *Mõſtrãce de droit*. Wherfore without

(without preiudice to any mannes opinion) mine opinion is, that it is geueen onely by this ſtatute: but whether it bee ſo, or not ſo, I do not greately force. Let vs ſee what it is, & in what caſes it lieth. If the king be entitled by office or other matter of record, that is trauerſable. Howbeit there is no cauſe of trauerſe, for that the office or recorde is true, in this caſe any man that hath right to ỹ poſſeſſion of the freehold of this lande, whiche in ſhewing of his right is able to confeſſe this office, and auoide it, ſhall bee receiued (if hee bee put out of his poſſeſſion, or grieued therby) to comme into the Chauncery and ſhewe his ſaid right, which being there prooued to be true, iudgemente ſhalbe geuen that the kings hands be amoued from the poſſeſſion of ỹ ſaid lands with the meane iſſues and profites to bee reſtored vnto the partye that ſueth the ſaide *Monſtraunce de droyt*. As for an example, It is founde by office, that the kinges tenaunt by knights ſeruice in chiefe died ſeiſed of certain lands which are deſcended to his heire being within age, where in dede in his life time I recouered this lande againſt him, and ſuinge no execution, ſuffered him to dye ſeiſed thereof, nowe vpon this office returned into the Chauncery ſhall I come and ſhew my right, that is to ſay, this recouery, and auerre that this land foũd by office, is the land that I recouered, or parcell thereof, whiche beeinge ſo proued and tried, I ſhall haue an *Ouſter le maine*, H.3.H.7. Like lawe is it if the kinges tenant diſſeiſed me of thoſe landes, & I made my cõtinual claime, or that I had title to enter for conditiõ broken into the ſaid landes in the life of the kinges tenaunt, and I entred, and after was diſſeiſed by him. But *quere*, if I did not enter in his life, whether nowe I maye be holpen by a *Monſtraunce de droyt* vppon the kinges poſſeſſion. And me thinkes not, becauſe I haue no right in that caſe till I enter, for vntill that time the right continueth ſtil in him, ſo that the king hath a right ere I can haue a right, whiche

ought

oughte to bee preferred and take place, ſince it is but for a time before mine. And for theſe caſes ſee the booke of H.3. H.7.fo.2. But if the king be entitled by matter of record, not trauerſable, as if hee bee entitled by double matter of record, in this caſe I cannot haue my *Monſtraunce de droyt*, no more then I can haue in the like caſe of Trauerſe, vnleſſe my title be found by one of the ſaid records H.9.E.4. f.51. As take the caſe to be, it is found by office ẏ one ſuch ẏ holdeth of the king diſſeiſed me, & thē committed a felony, vpon whom I entred, after which entry the ſaide tenaunt was attainted of the felonye. In this caſe I ſhall haue the land out of the kinges hands by a *Monſtrauuce de droyt, cauſa qua ſupra*. And yet the kings title is here by a record, and not trauerſable, that is to ſay, thattainder. But what thē? My title is alſo found by office, and appeareth by matter of record, which being proued true, dothe clearely auoyde the kinges poſſeſſion, and that is the reaſon I ſhal be receiued in this caſe to a *Monſtraunce de droyt*, as appeareth in H. 3. E.4.f.26. A. 4. H.7. f. 6. And therewith agreeth the booke P.4. H.7. f.7. where king Richard the third was attaynted of treaſon by acte of Parliament, and founde by office that he was ſeiſed of certaine lande, commeth one B. and ſaithe, that in the ſaide Parliament it was enacted, that an attainder of treaſon had againſt the father of the ſayde B. ſhould be auoided & adnulled, and he reſtored to his lands, & ẏ theſe lands cōprized in the office were in the handes of ẏ ſaid king R. by attainder of his father, & adiudged ẏ vpon this *Monſtraunce de droyt* the party ſhould haue reſtitution, becauſe his right appered by mater of record. Otherwiſe is it where it is foūd by office ẏ ſuch a one is attainted of felony, & is ſeiſed of ſuch lands which are holdē of ẏ king, now hee that hathe cauſe to ſue his *Monſtraunce de droyt*, cannot bee admitted thereunto, by reaſon of theſe twoo records. Yow be it, if it be ſo that there is ſuche attaynder in deede,

then

then may the partye that woulde ſue a *Monſtrance de droit* ſaye that there is no ſuche recoꝛd of attainder, whiche be-ing found true, he ſhalbe receiued to his *Monſtrance de droit*, as apꝛeareth in the ſaid booke Pa.4.Ed.7.f.7. Foꝛ nowe is there no recoꝛde againſt him but only the office, & not-withſtanding that by thoffice thattaindour is founde, yet this fynding makes nothing foꝛ the king, if it be vntrue. Foꝛ the iurye can neuer fynde a matter of recoꝛde, and if they do, it is to litle purpoſe: foꝛ the recoꝛde is euer triable by it ſelfe, and if there bee ſuche a recoꝛde it will appeare though they fynd it not, and if there be none, the fynding of it is voide. Thus maye you ſee that a *Monſtrance de droit* lyeth ſome tymes although the king bee entytled by dou-ble matter of recoꝛd, if it ſo be that the parties title apeare by matter of recoꝛde, oꝛ elſe it lyeth not. And yet *Choke, Lit-tleton & Nedham*, helde oppinion in Ma.14.E.4.7. that if it be founde beforе theſchetour that one was tenant in taile of certeine landes holden of the kinge the remaynder to another in fee, and that he in the remainder is outlawed of felony, and that tenaunt in tayle is dead wythout iſſue where in deede hee being tenaunt in tayle beforе the ſta-tute *De donis condicionalibus* after that hee had iſſue enfef-fed one B. in this caſe the ſaide B. ſhall ſhewe this mat-ter, and that the vtlagary was after the feoffement made and ſo haue the landes out of the kinges hands by a *Mon-ſtrance de droit*: But it ſhoulde ſeeme theire oppinion is a-gainſt the law and the bookes beforе reherſed, vnles this feffement were found by office, becauſe it appeareth that the king in his caſe is entitled by double matter of recoꝛd. And note that where the kinge is entitled but by office a-lone, there the partye may haue his *Monſtrance de droit* al-though his title bee not founde by offyce, as well as hes ſhould in ỹ like caſe if he were to take a trauerſe Ha.9.E.4 5. but otherwiſe it is where the king is ẽtitled by another

recorde beſyde the office whiche is not trauerſable, there he ſhal not bee receiued vnleſſe the parties title appere by matter of record. And note that if the kinge haue committed the land ouer, he that ſueth his *Monſtrance de droit* muſt ſue a *Scire fac.* againſt the cõmittee euen as he ſhould vpon a trauerſe, and as for taking the landes to ferme or for ſuing the ſayde *Monſtrance de droit* during the tyme the heire in whoſe right the kinge hath ſeiſed is within age. Lyke lawe is to be vſed as is before declared vppon the tytle of Trauerſe C.20.

Peticion. Cap.xxii

PEticion is all the remedy the ſubiect hath when the king ſeiſeth his lande or taketh away his goodes frõ him, hauing no title by order of his lawes ſo to do, in which caſe the ſubiect for his remedy is driuẽ to ſue vnto his ſouereine lord by way of petition only: for other remedy hath he not, as it hath beene ſufficiently declared before vpon the 15. chapter of the kynges prerogatiue. And therefore is his petition called a petition of right, becauſe of the right the ſubiect hath againſt the king by the order of his lawes, to the thing he ſueth for. And this petition may be ſued aſwell in the parlement as out of the parlement, and if it be ſued in the parlyament, then it maye bee enacted & paſſe as an act of parleñt, or els to be ordred in like maner as a peticiõ ẏ is ſued out of the plement which is in this maner, firſt after the petition is endorced it ſhal be deliuered to ẏ Chauncellor of Englãd, & then ſhal there be a cõmiſſiõ awarded out of the chancery to fynde ẏ right or title of him ẏ ſueth the petition, which being foũd by enqueſt

queſt, then he may enterplede with the king & not before, as apeareth in ℙ 18.E.3.f.15.℣.4.E 4.f.23.H.11.H.4.f. 52. & ℣ 10.H.4.f.4. And if vpō the ſaid cōmiſſion no title bee found for the partie but only for the king, yet the petition ſhal not abate, but the ptie ſhal haue a new cōmiſſion in ẏ caſe, for the petition is but as voide vntill the parties title be founde by office, & is not to be laide depending vntyll that tyme, as appeareth in ℣ 3.H 7.f.13. *Quere* for hee ſued a new petition in ẏ caſe. And note ẏ when the petition is endorſed, the pty muſt follow & purſue the ſame according to the endorſement, or otherwiſe his ſuite is void: becauſe the endorſement is his warrant therein, as appeareth in *Petition* 1.℣.18.E3.℘.22.E.3.5.& *Petition* 18.H.46.E.3. and therfore ſometime billes of petition be endorſed & ſent into the kinges benche or cōmon place & not into the Chaūcery, & that groweth vpon a ſpeciall conclusion in his petition & a ſpeciall endorſement vpon the ſame, for the generall concluſion is *que le roy luy face droit & reaſon*, which is as much as if he had prayed reſtitution of that ẏ he ſueth for: And there vpon ſuch a general concluſion the endorſement is *Soit droit fait as parties* whiche euer is deliuered vnto the Chāceller, as is declared. But if the cōcluſiō in ẏ petition be ſpeciall & the endorſement ſpecial, thē they ſhall proceede according to the ſaide speciall endorſement.

As for an example, the king recouereth in a *Quare impedit* by defaut againſt one ẏ was neuer ſūmoned, in this caſe the party ẏ loſt cannot haue a writ of diſceit vntill ſuche time as he haue ſued vnto ẏ king by petition for the ſayde writ & if in his petition he cōclude & pray that the kyng do hym right generally nowe the iuſtices before whome the recouerie was had cannot examine the deceit wythout an original writ directed vnto them for that purpoſe, & yet before he obtained that writ his right ſhalbe enquired of by commiſſion, but if he conclude ſpecially in his petitiō ẏ

it may please his highnesse to commaunde the Justices to procede to thexamination, whiche peticion is endorced accordingly, then may they do it wout any such write or cōmission to be sued, as apeareth in M.10.H.4.fo.4. So euer ẏ folowing & pursuing of the thing must bee according to thendorcement, for howsoeuer the conclusion in ẏ peticiō be the endorcement may be alwayes as it shall please the king as me semeth, & according to that the party must pursue it. And note that in euery peticiō where the kinge hath graunted the land ouer to another, a *Scire fac.* must bee awarded againste the patentee like as it shalbee where a trauerse or *Monstrance de droit* is tended, which patentee if he haue not ẏ whole fee simple but ẏ there is a reuersiō in the king or that the king is bounde to warrauntie, when he appeareth vpon the *Scire fac.* hee maye praye a write of Searche to bee awarded into the treasory to search what they can fynde for the kings title, as appeareth in H 9 E. 4.f.51. where *Sottle* sayth ẏ euery peticion must make mēcion of all the kinges titles, for if it be founde by the write of search that any be omitted, the peticion shal abate: and the reason of it is because that if on this suite of peticiō the king take an issue with the partie which is found againste him, his highnesse then shalbe concluded for euermore to claime by any of the pointes contayned in the sayde petition. And herewith agreeth the booke T 16.E.4.fo.6. But *quere* if search shalbee graunted vppon a trauerse or *Monstrance de droit*, because the statute of An.14.E.3.ca.13. that concerneth search doth speke only but of a peticion, but to ẏ it may be saide that ẏ time of making of the statut there was no trauerse geeuen. And *Screne* sayeth *Peticion* 6.A 7. H 5 that searche shall not bee graunted but where one sueth by peticion. And note also that in euerye peticion whether it bee sued in the Parlyament or els where, or whether ẏ landes remaine in the kynges handes or not in the

kynges

kinges hands but be graunted ouer, yet writes of searche shalbe awarded to serche the kings title ere the party shal enterplede wᵗ the king. Also it apeareth in the booke of T 16.E.4.f.6. before remembred that vpon a petition ỹ kingꝫ patentee had ayd of the king, & there appeareth also that if the king be not entitled by any matter of record but wᵗ out any title do enter into my lande whereby I sue vnto his highnesse by petition, that in this case no search shalbe graunted, because no title can be entended for the king in such case. Thus haue I opened & declared the maner of suing a petition, but to declare speciallye where it lyeth and where not it were a long matter to entreat of. But generally & by generall rules a man may briefelye declare it, that is to saye, in al cases where the party hath a ryght against the kyng, and yet no trauerse or *Monstrance de droit* will serue, there is he driuen to his petition. As for an example where the kinge is entitled by double matter of record. Like law is where he is entitled by a record not trauersable, as take the case the king recouered by assent and without title a stranger that hath good title shall not falsefy this recouery by a trauerse or *Monstrance de droit*, but is driuen to his petition, so it is where ỹ kyng recouereth by erronious proces the partye shall not haue a writte of error, vntil he haue sued by petition for it. P 17.E.3.fol.31. So likewise it is if lãds are holden of me by knights service a stranger bringes a *Precipe in capite* of those lãdes against my tenant & recouereth by defaut, although by this recouerie I am not put out of possession of my seignorie, but ỹ the tenant holdeth of me as he did before and also of the king by conclusion, yet in this case if ỹ recouerer dye his heire within age, & the king seiseth ỹ ward, I am driuẽ now to my petition for the ward, as apeareth in T, 17. E 3.37. for this is another thing then euer I was seised of. Also it is a generall rule ỹ where a strãger ỹ hath title can

not enter vpon a comō ꝑson but is driuē to his acciō, there he can haue no remedy agaīst the king but only a peticiō, as take the case to be. It is found by office the kings tenāt in chiefe died seised his heire wͤin age where in deede the said tenant had nothing but by disseisin done to me, and I suffred him to dye seised without any claime made, in this case I get no remedye by *Monstrance de droit* or trauerse, but am driuen to my peticiō. And so in al cases like where myne entre should be tolled if the lands were in ẏ hands of a comon ꝑson, as apereth in M.7.H.4.f.33.T.9.H 4.f.5 Also where as ẏ king doth enter vpō mee hauing no tytle by matter of record or otherwise & put me out, & deteines ẏ possessiō frō mee ẏ I cannot haue it againe by entry wͤout suite, I haue then no remedy but only by peticiō. But if I be suffred to enter, mine entry is lawfull, & no intrusion: or if the king graunt ouer the lands to a strāger, thā is my peticiō determined, & I may now enter or haue my assise by order of the comon law against the said stranger being the kings patentee, as appereth in M.4.E. 4.f. 22. & M 24.E 3.f.65.H 10.E 3.f.2. And a great difference is beetweene this case & the case where the kinge is intitled by double matter of record or such like, for in these cases notwͤstanding ẏ grant made ouer by his highnes of the lāds to another, yet am I driuen still to my peticion to ẏ kyng & haue no other remedy M.7.H.4.fo.21. but it is not so in this case: & the reason of this diuersitie is because ẏ when his highnesse seiseth by his absolute power contrary to the order of his laws, although I haue no remedy agaīst him for it but by peticion for the dignities sake of his ꝑson, yet when the cause is remoued & a comon person hath the possession, then is myne assise reuyued, for nowe ẏ patentee entreth by his own wrong & intrusion, & not by any tytle ẏ the king geueth him for the king had neuer title ne possession to geue in that case: and therfore not like the other

cases

cases before, where the kinge hath the landes by the order of his lawes ỹ is to say by double matter of record or suche other lyke. And this appeareth in M.4.E 4.f.21.& 25. & M. 24.E.3.f.64.et *Trauers* 34.33 li all. Like lawe is it I haue a rent charge out of certeine land & the tenant of the land enfeffeth ỹ king by deede enrolled, now during the kings possession I must sue by petition, but if his highnesse enfeffe a strãger I may distrain for my rent vpõ ỹ strãger, & so is it in al the cases before, where a man may haue his trauerse or *Monstrance de droit*, if the landes be once out of the kings handes, the party then may haue his remedye ỹ the comon law geueth him: for in al these cases the petitiõ did lye only for the dignitie of his person & not for ỹ right that he had to the possession of the thing. But if the kynge purchaseth landes holden of mee, learne what remedye I may haue for my seignory during the kings possessiõ: for *Wilby* saith in *Assise* 124. M.20.E.3. ỹ I haue no remedy in ỹ case, & if his highnes make a feoffement of these lãds to hold of himself, yet can I not distraine for my seignory like as I might do in the case of the rent charge before, because there cãnot be ij. seignories of one self land, but am driuẽ to my petition in this case, for ỹ king vpon this feffemẽt by order of his lawes should haue renued ỹ seignory in mee ỹ is to say, to haue made ỹ feoffee to hold of mee of whõ it was holden before, as apereth in *Petition* 18. & 19 M 46.E.3. & M 17.E.3.f.59. & so hath it ben vsed alwaies where his highnes hath lãds by forfeiture of treasõ holde of a cõmõ pson, if he make a feoffement of those lãdes it must be *Tenendũ* of thẽ ỹ they were holdẽ of before as I haue opened vpõ ỹ xij. chapt of ỹ kigs prerogatiue. & so it is where ỹ time is deuolued to his highnes for a mortmaine: But ỹ is geuẽ by ỹ statut *de religiosis*. Also if the king disseise my tenãt, during this possessiõ I haue no remedy for my seignory but only by petitiõ, & if ỹ kig enfeffe my tenãt to hold

of his highnesse, yet haue I no remedye for my seignorie, but onely by peticion. But if one hold certein lands of mee which are falsely found by office to be holden of the king ī Capite, & the king seiseth thē & enfeoffeth my tenant therof to hold of his highnes, in this case I may now distrein for any seignory & am not out of possession, & these cases appere P 32. E 3. *Assise* 122. et 124. M. 20. E. 3. *Auowrie* 113 & P 46. E. 3. 11. & the reason of the diuersitie is this, because ẏ in ẏ last case my seignorye was neuer suspended, but euer more had his being & ẏ notwithstāding the office, for it did not apptain to mee to trauerse the office & discharge ẏ tenure, but that matter was left to my tenaunt to do, & seeing he did it not, he hath charged him selfe of a tenure by way of collusiō to the king as well as to mee, but it is not so in the other case. Also it is to be noted ẏ if the king seise landes by title of wardship & make a feoffement therof, in this case the heire neede not to sue hys peticion but maye haue a *Scire fac* to repeale the said letters patents, because ẏ king was deceiued in his grant as appereth T. 7. H. 4. f 17. & M 21. E. 3. f. 47. For there the king himselfe is in possession still till liuery be made, so the heire there hath no cause to sue by peticion, & the kinge is bounde to deliuer it vnto him in whose right he seised. Also note ẏ sute by peticion can be to none other then only to ẏ king, for no such sute shal be made to ẏ Queene or to ẏ lord prince, for these ꝑsonages haue no such prerogatiue, as it apeareth in P 11. H. 4. f. 7. P. 10 H 4. *Scire fac.* 135. P 10. E. 3. f. 26. & *Voucher* 110 M. 14. E 3. but though ẏ king be seised sometime in another bodyes right & not in his own, yet the sute ẏ is to be made must be by peticion as wel as if he were seised in his own right, as apeareth in 10 H 4 f 4. And as I said in ẏ beginnīg, a mā shal haue his peticiō for goodz as wel as for lādz, as wher theschetor seiseth goodz of one ẏ is vtlawed & hath accōpted for thē ī ẏ excheker & after thutlagary is reuersed

in

in this case the partye hath no remedye for his goods but only by peticion. And this case you shal see in T. 34. H. 6. f. 51. Howbeit *Cateſby & Huſſey* hold oppiniõ to the contrary hereof M. 1. H 7. f. 7. And learne if a peticion be sued for landes and the plaintife be nonsuite whether it be pemptorie or not, because some saye that that suite is as it were his writte of right, and hereof see the booke H 11. H. 4. fol. 52. & M. 3. H. 7. f. 14.

¶ Where a *Scire fac.* must bee sued beefore a liuery or *Ouſter le maine.*

Cap. xxiij.

IF the kyng be seised of a ward and graunteth it *durante minore etate*, nowe when the heire commeth of full age, and sueth his generall liuerye, hee needeth not to sue a *Scire fac.* againste the patentee, because his estate is determyned by the full age of the heire, and yet it maye bee that the heire had forfeited his mariage vnto the patentee and then he hath good cause to reteine the land till he bee satisfied of the forfeiture. But the lawe shall not entende anye suche forfeiture to bee, and therefore there needeth no *Scire fac.* be sued. Lyke lawe is it, as seemeth if the king graunt the wardship for no tyme certayne, but *quamdiu in manibus noſtris fore contigerit*, if hee make a speciall liuerye vnto the heire being within age, there needeth no *Scirè fac.* to bee sued, so is it where the graunt is but *durante beneplacito noſtro*, but if the kynge haue land in warde and enfeffeth thereof a straunger, some thinke the heire needeth not to sue anye *Scirè fac.* against the feffee but at hys pleasure, and some other thinke he must, because hys estate is not determined by the full age of the heire, as it is in the first case I put before. And it may bee ỹ an auncestor collaterall

lateral vnto the childe hath releesed with warrãty which is descended which the feffee might plede if he came in by *Scire fac.* or els by the liuerie the said warrantie is vtterly lost, & these cases apeare ℙ.7.℣4.f.17.21.& 32.& 41.℣ 10.℣.6 fo.20.& ℙ 5. E.4.f.3. ℣.21.E.3.fo.47.℣3.℣.7.fo.3.Howebeit mee thinks it were wisedom for the heire to sue a *Scire fac.* to thintent that he therby w̃ the kinges helpe myght repell the said letters patents & bring them as it were out of his way, which thing he may sooner bring to passe by ỹ kings suite than by his own. Also the heire when he sues liuery neede not to sue any *Scire fac.* against him that hath the lands to ferme vpon the trauers, as appeareth in T 1. ℣ 7.f.27.for he hath no terme certein in the land but *donec discussum fuerit*, which woordes are become void after the heire is of full age, because it cannot bee then discussed w̃ out preiudice of the heire: and therefore voyde. Then further let vs see where he that sueth by petition or that tendeth his trauers or *Monstrance de droit* shall sue a *Scire fac.* and where not. And as to that it is a generall rule that if the kinge haue graunted the wardship of the landes ouer for any terme certain, or graũted any other certein estate in the landes, he that sueth his petition, *Monstrance de droit* or trauerse must sue a *Scire fac.* against the kinges patentee in suche case, but he nedeth not to sue any against the heire in whose right the king is seised of the lande, because he that sueth doth not pleade with the heire but onely with the king or such as hath his interest, as apeareth in 37.lib.ass.11. Like law it is if the kings grant be but *Durante beneplacito nostro*, or that it be made hãging ỹ trauers, petition, or *Monstrance de droit*, in this case hee that suethe nede not to sue any *Scire fac.* And these cases apeareth ℙ. 5.C 4.f.3.& *Briefe* 260 ℙ.13.E.3. And note ỹ if the kynge graunt the wardship to one whyche graunteth it ouer to the husbande and to his wife, then must there a *Scire fac.*

bee

be sued both against the second lesse and the patentee but the wife neede not to be named in the *Scire fac.* For there lyeth no voucher in this *Scire fac.* Howebeit in a wryte of garde shee should haue ben named, because of the voucher and this case is adiudged *Briefe* 618 H.6.46.E 3. & yet neuertheless *Newton* is of opinion in 48 H 6. fo.17. that no *Scire fac.* shalbe awarded against the lesse in this case but onely against the kings patentee. And learne if the king grant but the body alone whether there neede any *Scire fac.* to be sued or no. Also note this case, that is to saye, where ỹ king seised for wardshipp before office & made a graunt ouer, & after office was found whereby it appeared ỹ the chyldes father in whose right the king seised, was but tenaunt for terme of lyfe, the reuersion to another in this case he in ỹ reuersion had an *Ouster le maine* wõut suinge any *Scire fac.* against the patentee, as it appeareth H.10.E 3.fo.2. and at this day the case is more stronger for such a graunt were voide because it is before office. And therfore vppon anye such voide graunt there neede no *Scire fac.* And in 14. E. 4.f.7. it apeareth that one had trauersed an office which was sent into the kinges bench to trye and had forgotten to sue his *Scire fac.* and yet he was suffred to go agayne into the Chauncery to pray a *Scire fac.* vpon the first trauers for it was said that the Chauncery is a court of conscience and for that cause the thing that was there amisse may be reformed at all times. And learne if this *Scire fac.* be sued against many, and one of them dyeth whether thys shall abate the trauerse, *Monstrance de droit*, or petition whereupon it is sued or els only the *Scire fac.* It seemes that nothing shall abate but the *Scire fac.* because no mencion is made of the tenaunt neyther in a trauerse, *Monstrance de droit* or a petition. And of this matter see the booke in H 7 H. 4.f.33.

Duster

Ouster le maine. Ca.xxiiii.

Ouster le maine is the iudgement that is geuen for him that tendeth a trauerse or sueth a *Monstrance de droit* or petition, for when it appeareth vppon the matter discussed that the kinge hath no right nor title to the thing hee seised, then iudgement shalbe geuen in the Chauncery that the kinges handes be amoued and thereupon *Amoueas manum* shalbee awarded to the schetor which conteruailes as muche as if the iudgement weare geeuen that hee shoulde haue againe his lande as appeareth, in M.24.E.3.65. and this iudgement sometime is geuen in the kinges benche and not in the chauncerye, and that is in case where the parties descende to an issue, then for the tryall thereof they of the Chauncery must awarde a *Venire facias* retournable in the kynges benche at a certein day, at whyche day notwythstanding that the shirife returne not the writte, yet the *Alias venire facias* shall not bee awarded out of the Chauncerye but out of the kinges benche: for there and no where els it is recorded, *quod vicecomes non misit breue*, as appeareth in P 13.E.4.fo.8. And when the issue is founde for the partye they of the kinges benche shall geeue iudgement and awarde an *Ouster le maine* without suynge for the same in the Chauncerye as appeareth in M.21.H.7.fo.4.& 29.lib.all.43. and yet the recorde of the issue that was tryed was not sent thether but only ỹ transcript therof, but what then, ỹ iudgement is to be geuen vpon the verdit which is there of record, & when bothe courtes be courtes of the common law and the kinges courtes, they vse not to remaunde anye thynge to the place from whence it came but to geeue iudgement there where it is tried, and *Sharde* sayde ỹ when a record comes once into the kynges benche, it shal neuer go frō thence.

fo.35.

Also

Alſo note that ſomstymes there goeth an *Ouſter le maine* as well to the kings patentee as to the eſchetour & that is where the king hath graunted the thinge that he ſeiſed to any other, but notwithſtanding that there go ſuch wrytes of *Amoucas manum* bothe to theſchetor and to the partye, yet the kynge is out of poſſeſſion as ſoone as iudgement is geeuen in the Chauncerye, not forcinge whether anye of theſe writtes bee awarded or not eyther to theſchetour or to the partye: and thereupon the partye for whom iudgement is geeuen may enter forthwith into the landes, and ſhalbee ſaide no intrudor, as appeareth in H. 10. Ed. 3. fol 2. And the reaſon of it is becauſe the iudgement tyeth not the kyng to the deliuerie of the poſſeſſion, but onelye to leaue his handes of the poſſeſſion. And note that if a *Diem clauſit* come to the eſchetour, hee by vertue of that wryte before he make any enquiry may ſeiſe the land for the kinges behooſe, whiche after hee hath once ſeyſed, yf after by offyce no tytle bee founde for the kynge then the partye that ought to haue againe the lande, maye ſue for the ſame in the Chauncerye where the office is returned & then *Amoucas manum* ſhalbee awarded, for vntill the makyng of a ſtatute at Lincolne Anno 29. E. 1. called the ſtatute *De eſcaetoribus* the partye had no remedy in ſuch caſe but only to ſue vnto the king him ſelfe, as it appeareth by the ſayde ſtatut, and nowe that ſtatute geeues an *Ouſter le main vna cum exitibus*. Howbeit this *Ouſter le maine* maye not bee ſued by parcels no more then a liuerye and therfore if dyuers wrytes or commiſſions be awarded into diuers counties to enquire after the death of A. B. & in one countie it is founde that he holdeth nothing of the kynge but in ſocage, and in the ſame countye and by the ſame enqueſt it is founde that he holdeth of another by knights ſeruice yet ỹ lord by knights ſeruice getteth no *Ouſter le main* vntil ỹ other enqueſts be alſo returned in, *Cauſa qua ſupra*

For

For if he should, then he should haue it for the lands & not for the body, and so should haue it by parcels, for the body may not be deliuered as longe as there is anye enquest to be returned in. And the reason of it is, because ỳ enqueste may find a tenure of the king by knightes seruice in chief in which case his highnesse ought to haue the whole lãds, and if it be but a cõmen tenure by knightes seruice, yet his highnesse at the least ought to haue the preferrement of the body, yea & though the lord of whome it is founde to be holden be the archebishop of Caunt or such a one againſt whom the kings prerogatiue wil not hold for the lands, yet because it holdes for the bodies hee getteth no *Ouster le main* vntill all the offices bee returned in, for the reaſõ before made, as apeareth in *Liuerie* 29. H. 16. E. 3. Howbeit by fauor & grace of the court tharchebishop had his *Ouster le main* before the other offices returned. And so note how in times past men haue sued *Ouster le maine* vppon a seisin made for the kinge although the office founde afterwarde did not entitle his highnes. Howbeit at this daye it is not so vsed, for thescheator wil not seise vnlesse there be an office found although he might lawfully do it by the words of the writ *Diem clausit*, which vsage I do nothig mislike, considering the great trouble it auoideth ỳ might else ensue to the kings subiects. And note that in all cases where the king is seised or in possession of the land by office or any other matter of record, his highnes seisin cannot be de liuered out of him vntil such time an *Ouster le main* be sued as if the king be seised by office of the land, of any Idiotz or for *annum, diem & vastum* of lands of any ỳ is attainted in these cases he ỳ should haue these lãds after the kynges title determined must sue an *Ouster le maine*, otherwyse it is where the king is not seised of the lande but only entytled to the pũts, as of the lands of him that is outlawed in a personall action, or of clerke conuict or suche lyke, there

neede

neede no *Ouster le main* to be sued, as appeareth in *Trauerse* 48.H.4.E.3.f.47.and 9.H 6.f.20.and if the lands whiche is seised into the kinges hands bee holden iointly by many, yet euerye one of them by himselfe may sue his *Ouster le main* of his owne parte without his companyons, as appeareth in T 2.H.4.23.

Liuerye. Cap.xxv

THe maner of a suyng of a generall liuerie doth partly appeare in the title of Liuery in the great abridgement of Justice *Fitzherbert* Añ.12.H.4.*Liuerie* P. 4. & Añ 21.R.2.*Liuerie* P 5. Where it is declared that after ỹ heire that was in the kynges warde is come to full age, then a writ *de Etate probanda* shalbe awarded vnto the shirife of the shiere where the sayde heire was borne, to enquire of his age, in whiche case it is required by the law that euery one that shall passe in that enquest shalbee of the age of xliij.yeares, meanynge thereby that they & euerye one of them shoulde bee of full age at the birth of the chylde, because that suche haue better knowledge and remembrãce then other of lesser age haue, and that the heire that ys in warde enforme the enquest by certeine signes and tokẽs of the tyme of hys birthe, as to saye, that that yeare there was a greate tempest or a greate plague, or suche lyke, whyche signes so geeuen in euydence shalbee retourned by the shirife as well as the principall matter. But whether it bee requisite to haue xij. or a lesse number in the sayde enquest or not, learne, for some thinke that anye number from two vpwarde will serue, because the tryall is by proues, and see the newe *Natura breuium* folio 253.

E.

fo.253. E. where it appeareth ỹ this writ of *Etate probanda* was directed to the eschetour of the countye where he was borne and not to the shirife. Howbeit note alwayes that they where the lande is shall neuer enquire of this matter, vnlesse the birth and lande were bothe in one shyre, for they haue enquired of it already, that is to saye, when they did fynde the firste offyce. Thus when they haue founde his age, that inquest shalbe returned into ỹ Chaũcerye, and from thence shalbee awarded a writte to the Lord keeper of the priuie seale, signifying vnto him that the heire is of full age, and vppon that a priuie seale shall bee directed to the Chamberlaine of Englande to receiue his homage, whiche being receiued, the saide lord Chamberleyne shall certifye the lorde Chaunceller by writ of the receipt therof, and then shall the heire haue his liuery. But it seemes that if the heire were neuer in warde but of full age at the death of hys auncestour and so found by offyce, that then he shall haue liuerye as is declared vpon that office onely, without suynge anye writ of *Etate probanda*: for the writes of liuery in this case make no mention of anye *Etate probanda* as they doe in the other case, but if the heire bee wythin age and in the kynges warde, and after when hee comes to his full age other landes descende vnto hym whyche the kynge also seyseth by an enquest that fyndes the heire of full age, yet this notwithstandynge hee must nowe sue an *Etate probanda* vppon bothe offices, as appeareth in M.13.H.4.6. And the reason of it is, because the fyndinge of him of full age is but as voyde as long as there is a recorde which founde hym wtin age, to ỹ which record ỹ king might cleaue vnto as the best record ỹ maketh for him vntill such time ỹ contrarye therof be pued by the writ of *Etate probanda*. Howbeit at this day the statut made Anno 33.H.8. hath much abriged

the

the fees that haue bene geeuen vpon the ſuite of a generall liuery, namely foꝛ liueries to be ſued of clere yerely value of v.li.oꝛ vnder, and that it may be ſued without any office to be found. But I doo not ſee that the maner of the ſuit is in any other point altred oꝛ changed by the ſaid ſtatut, but it remaines as it did befoꝛe. And that ſtatute alſo geeueth men licence to ſue a general liuery of lands not excedinge the clere yerely value of xx.li. whereby I ſee no let but that a man may ſue his generall liuery alſo foꝛ lands aboue the yerely value of xx.li. as he might haue done befoꝛe the making therof, foꝛ this ſtatut is not contrary to any law that was befoꝛe in that point, ſauing that a generall liuery vnder the value of xx.li. cannot paſſe oꝛ be ſued, if he haue not firſt his warrant from the maiſter of the kinges wardes & liueries, ſurueiour, atturney, and general receiuer, oꝛ thꝛee of them, ſigned and ſubſcribed with their names & handes. Thus may you ſee ỹ maner of ỹ ſuing foꝛthe of a generall liuery, which liuery may not be ſued by parcels, as I haue ſaide befoꝛe, but entierly, that is to ſay, of al the landes the king is oꝛ ought to be ſeiſed of in his right that ſues the liuery. And therefoꝛe if the heire ſue liuery but of parcel of ỹ that is founde by office, oꝛ if the aunceſter were ſeiſed of other landes then are found by office, if the heire ſue his general liuery beforꝛe an office thereof found, omitting them in the liuery, the liuery is miſſued, as appeareth in *Liuerye.* 28.T.12.R.2.P.44.E.3.*folio.*1. &.25. & H.2 H.7. *folio.* 12. and therefoꝛe it beehooues the heir beefoꝛe hee ſue hys liuerye, to cauſe an office to bee founde in euerye ſhyꝛe where his aunceſtour hadde anye landes. And this entyer liuerye is entended as well of landes holden of other Loꝛdes, beeinge in the Kinges haudes, as of the landes that are holden of the Kinge, and therefoꝛe if a manno holde of the Kinge in chiefe by knightes ſeruice, and of other loꝛdes in ſocage & die, his heire beinge a daughter within the age of xiiij. yeres, in this caſe when the ſaid daughter commeth of the age of xiiij. yeres, ſhe getteth no liuery of thelands hol-

den in socage: but must tarry til she be of the age of xvi. yeres, ẏ shee may then sue liuery of the whole, as apereth in *Liuery* 19. *H.* 35. *H.* 6. But note that in somme cases one shall haue liuery of parcel, & that is wher lands discēd to diuers daughters, & one is within age, & the other of ful age, nowe shee of ful age shal sue liuery with a partition of her parte of al things that are seuerable: and this liuery is well sued although it be not of the whole lands descended, but if ther be any things in ẏ kings handes not seuerable, as aduowsons, or such like, ẏ must so remaine stil vntil the other bee of ful age, as appeareth M. 38. H. 6. f. 9. And so note, that in a general liuery, if any thing be omitted, the liuery is missued: & therfore some say, ẏ after such a general liuery had there shalbe a writ awarded to enquire of the concelemēt, that is to say, whether the heir hath left out of his liuery or not, any of the lands that were his ancestors, which writ is called *breue de terris concelatis*. And see the statut 28. E. 3. ca. 4 that geues the rents to them that sue liuery, when the rent day commeth, although it commeth next day after their liuery. And loke more for liuery in the exposition vppon the third chapiter of the kinges prerogatiue.

Reseiser. Cap, xxvi.

REseisir lieth where a general liuery, or *Ouster le main* is missued by any persō or persons vnduely, and not according to the forme and order of the law, or vpon an office which is sufficient in the lawe for the party to haue liuery or *Ouster le main*. In this case ẏ kinge may reseise the landes without suinge any proces againste the partye, and shall bee answeared of al the meane issues and profites receiued and taken from the time of their first seisin, if it were sued out of his handes by an *Ouster le maine*, and if by a liuery, thē but from the time of the liuery. And the party that hath pursued it shal be accompted none other then

then as an intruder vpon the kings poſſeſſion after office, in which caſe no freholo ſhall bee adiudged in him, nor his wife of that poſſeſſion ſhall haue any dower, as appeareth in *Liuery* 3.*P*.18.*E*.3. *H*.21.*E*.3.*fol*.1. & *M*.24.*E*.3.*fol*.65. But if one haue *Liuery*, or *Ouſter le maine* by due proces, and after a record is founde in the treaſory, or els where, or an office in the countrey, whereby the kinge is entitled of a title growen vnto him before the ſuinge of the ſaide *Liuerye*, or *Ouſter le maine*, although the party ſhoulde haue had no *Liuery*, or *Ouſter le maine*, in caſe the ſaid records had then appeared, vnleſſe he could haue auoided the ſaid recordes, yet for as much as they did not then appeare, hee ſhall not bee nowe after *Liuery* or *Ouſter le maine* caſt out of his poſſeſſion without a *Scire facias* to be purſued againſt him, for ſo hath the ſtatute prouided that was made at Lincolne in the 29. yeares E. 1. called *Statutum de Eſchaetoribus*, the tenoure whereof is this: *Ad parliamentum regis apud Lincolne tentum in octabis ſancti Hilarij anno regni ſui viceſimo nono per conſilium regis concordatum eſt coram domino rege, ipſo rege conſentiente, & illud extunc fieri & obſeruari precipiente de conſilio venerabilis patris W. de Langton Couent, & Lychf. epiſcopi tunc eiuſdem regis Theſaurarij, Iohannis de Langton Cancellarij, & aliorũ de conſilio tunc ibidem preſentiũ, & coram rege, videlicet, Cùm inquiſitiones per eſchaetores ſuos captæ per quecũque breuia regis in cancellaria ipſius dñi regis fuerint retornã, & per eaſdem inquiſitiones compertum fuerit quòd nihil tenetur de ipſo dño rege, per quod cuſtodiæ terrarum & teñ hmoi ratione inquiſitionis in manum dñi regis per ipſos eſchaetores captæ, ad ipſum dñum regem nullo modo pertineant: quòd ſtatim & abſque dilatione aliqua mandetur per breue dñi regis de cancellar' precipiend' quòd eſchaetores de terris & teñtis ſic in manũ dñi regis per ipſos captis de tempore quo terræ & teñ illa in manu dñi regis extiterint, integrè reddant ipſi vel ipſis, cui vel quib⁹ per inquiſitiones prius per eoſdem eſchaetorès captas compertum fuerit, quòd terra & teñta illa debeant remanere, ſaluo ſemper dño regi, quòd ſi poſtquam eſchaetores ſui manus amouerint per breue ipſius dñi regis, vt prædictũ eſt, aliquid contigerit*

inueniri

inueniri in cancellaria, vel adſcaccarium, vel alibi in curia ipſius dñi regis, per quod cuſtodia terrarũ aut teñ eorundem, de quibus eſchaetores manus ſuas amouerint in forma prædicta dño regi pertineant, quòd ſtatim premuniatur ille, in cuius ſeiſina teñta prædicta fuerint per breue de cancellaria, quòd ſit ad certum diem corã dño rege vbicunque &c. oſtenſ. ſi quid pro ſe habeat vel dicere ſciat quare dñs rex cuſtodiam earundem terrarũ & teñtorum habere nõ debeat, iuxta formam euidentiarum ſeu memorandorum pro ipſo rege compertorum. Et ſi venerit, & pro ſe oſtendat quare eadẽ cuſtodia ad dominum regem non pertineat, aut pertinere non debeat, immò quòd remanere ſibi debeat, recedat quietus, & cuſtodiã ſuam retineat. Si autem præmonitus non venerit, vel venerit, et nihil ſciat dicere, quare rex cuſtodiam illam habere non debeat, ſtatim reſeſientur terræ & tenementa illa in manum domini regis nomine cuſtodiæ tenend' vſque ad legittimam ætatem hæredum eorundem, ſicut ſuperius dictum eſt. Et ſi compertum fuerit per inquiſitiones per eſchaetores ſuos factas & retornatas, quòd cuſtodia eorundem terrarum & teñ in inquiſitionibus contentorum, & in manum dñi ſeiſitorum domino regi remanere nõ debeat, quod ſtatim mandetur eſchaetoribus quòd manus ſuas amoueant, & exitus integrè reddant &c. Eodem modo ſi poſtea compertum fuerit per euidentias & memoranda in Cancellaria aut ſcaccario, vel alibi, vt prædictũ eſt, quòd dominus rex cuſtodiam eorum habere debet reſpondeatur ipſi domino regi de exitibus integrè per manus illorum qui terras aut tenementa illa tenuerint à toto tempore, poſtquam terræ & tenementa illa primò in manum ipſius domini regis per eſchaetores ſuos capta fuerint per breuia ſupradicta, & iſte modus de cætero obſeruetur in cancellario, non obſtante quadam ordinatione nuper per dominum regem facta de terris & teñ in manum ſuam per miniſtros ſuos captis & non liberandis niſi per ipſum dominũ regem, & prout cõtinetur in quadam diuidenda per ipſum regem & cancellarium facta. Cuius vna pars penes cancellarium remanet. Statutum de eſchaetoribus editum 29. E. 2.

Alſo a yeare before the making of this ſtatute, was there an other ſtatut made, ẽtituled, *Articuli ſuper chartas,* **which in the** 19. **chap. therof ſaith in this wiſe:** *De reſcheiue la ou leſchetour*

chetour, ou le vicount ſeiſount en le maine le roy terres la ou il nad reaſon de ſeiſer, & puis quaunt troue eſt la non reaſon, les iſſues de meſne temps ount eſtre ceo en arrere retenus, & nad rendus quaunt le roy ad le maine ouſte, voet le roy que deſormes la ou terres ſount iſſint ſeiſies, & puis le maine ouſte, pour ceo que il ny ad reaſon de ſeiſer ne tener, ſoient les iſſues pleinment rendus a celuy a qui la terre demurt, & auoit le dām reſceu.

By this ſtatute it plainely appearethe, howe that before the makinge thereof there was no *Ouſter le maine* graunted *Vnà cum exitibus*, although it might neuer ſo plainely appeare the kinge had no cauſe to ſeiſe. Howbeit ỹ miſchief is nowe remedied by bothe theſe ſtatutes. Alſo by the one of theſe ſtatutes it appearethe, that the *Ouſter le maine* in ſuche caſe might not be graunted without ſuinge to the kinge him ſelfe, whiche is alſo remedied by this ſtatute *De eſchaetoribus*, whiche ſtatute although it make no mention of liueries, but onely of *Ouſter le maine*, yet liueries are taken to bee within the compaſſe and prouiſion of the ſame. And where the letter goeth onelye to the caſes where the kinge ſeiſeth before office, and afterwarde the office that is founde, dothe geue his highneſſe no title, that there the party maie haue his *Ouſter le maine*, makinge no mention of an *Ouſter le maine* to bee graunted vppon any petition, trauerſe, or *Monſtraunce de droyt*, as in deede a trauerſe was not in vſe at that time, yet men by an equitie extende this ſtatute *De eſchaetoribus* bothe to the one and to the other, becauſe the ſtatute is beneficiall, as appeareth H.9.E.4.51. and in diuers other bookes. And *Yeluerton* there ſaithe, that if after liuerye, or *Ouſter le maine* an office be founde, whiche entitlethe the kinge of a title growen vnto him ſince the liuery, or *Ouſter le maine* granted, that in that caſe this ſtatute notwithſtanding, the kinge may reſeiſe without a *Scire facias*, for the wordes are onely where a recorde or an office is found that maintaineth the title wherby the kinge firſt ſeiſed. Howbe it many holde opinion againſte him, and ſay that it was in the ſelfe ſame miſchiefe the ſta-

tut was made for, *tamen quere*, for this statute *De eschaetorib* shoulde seeme to be meante onely to remedy that that was a mischief at comō law before ẏ making of ẏ said statute, as where there was no recorde founde at ẏ time of ẏ liuery or *Ouster le maine* sued to lette or hinder the party from suinge of theire saide liuerye or *Ouster le maine*, but afterwardes was there found such a recorde, now this notwithstanding would the kinge reseise & put the party from his possession wout answere to any proces sued against him, wherupō he might answer & so driue him to sue by petition, & make him render al ẏ meane profits, whiche was a great mischiefe & hinderance to ẏ party, for remedy wherof this statute was made: but the like mischief or hinderance is not where the king is entitled by a title growē since the liuerye or *Ouster le maine*, for here the partye shall not answeare the profites but frō the time of this title growen. And also the kinge doth him no wronge, for if standes ẏ and affirmes ẏ liueri or *Ouster le maine*, & the king therby makes not the party an intruder as he dothe in ẏ other case, & if the saide *Yelwertons* opinion should not be lawe, they would make ẏ the king could not seise vpon an alienation wout licence made and found by office since ẏ liuery or *Ouster le maine* sued, which were no reson, & therefore I thinke the said *Yelwertons* opinion should prevaile in this case. And to the same intente & effect be those bookes ẏ I can finde, for I can finde no *Scire facias* sued but in cases of a title growen before the liueries or *Ouster le maine*, & therefore in a *Scire facias* sued vpon this statut against ẏ party that had liuery or *Ouster le maine* beeing tenāt of the land at the time of *Scire facias* sued he was demed in the self same plight & course against the kinge, as he was at the time of ẏ suing of his liuery or *Ouster le main*, for where he had made a feffemēt by licence, & taken an estate again iointly to him and other, yet this *Scire facias* did lie against him soly, & did not abate for the ioyntenauncie. So was it aiudged in a *Scire facias* sued vpō this statut that the party must maintein the title wherby he hath liuery or

Ouster le maine, and must mainteine it so that it is and was a good title & sufficient to haue liuery vpon, notwstanding any recorde that is now founde: as take the case to be this, one hath liuery as sole daughter & heire, & after by office it is found ẏ she hath a sister, which ought to haue had liuery wͤ her, wherupon a *Scire facias* is sued against ẏ party that had liuery, to come & shew why the lande should not be reseised, if she come and wil say that they be daughters by seueral venters, and that this land was geuen to her father & mother in special taile, & so ought she to haue the liuery, as she had, ẏ is to say, soly, this plee wil not serue her, because it doth not maintein the liuery: for how could she haue had liuery soly, vnlesse this matter had bene so found by office. For if this second office had appeared before the liuery, she could not haue trauersed it, vnlesse she had made title, and then title can she neuer make against the kinge, as heire, vnlesse the saide title be firste founde by office. Wherefore no more thā she might trauerse the said office it had bene founde before liuery, no more may she trauerse it nowe in this *Scire facias* after liuery, as it appereth 30.li.ass.28. & so note that the record cannot be trauersed in this *Scire facias* in no case, vnles it were trauersable before liuery or *Ouster le maine*. Also in the new *Natura breuium fo.260*. and in H.5 H.5.2. I find a *Scire facias* sued vpon this statut against him that had liuery, because an office hath found an other to be nerer heire to the auncestour that died, then was hee that sued liuery. So alwaies, as farre as I can finde, it is sued vpon a record that disproues ẏ liuery or *Ouster le maine*, and not vpon any that affirmes it, whereby I suppose that *Yeluertons* opinion is lawe, as is before declared. And it semes that by this statut ẏ king must sue a *Scire facias*, although the record or title that is founde for him be founde within a yeare after liuerye or *Ouster le maine* sued. And learne whether Assise lieth against the eschetor that seiseth wͤout a *Scire facias*, in cases where a *Scire facias* should be sued: for by ẏ sta. of W.1.ca.24. assise lieth agaist him in cases wher

he sei-

he seiseth any landes by colour of his office without special warrant, or commandement, or certain authority that belongeth to his office so to do. And learne whether the king by that seisure hath any possession, for if the kinge seise wout a *Scire facias*, where he ought to sue a *Scire facias*, ỹ party hath no remedy but to sue vnto him by petition, euen as he should do if his highnes had seised any other lãds of his without cause. Howbeit the king by such a reseiser vndoeth not the parties possession, so that he shal be said an intruder from the time of liuery or *Ouster le maine* sued, as it doth in the case reseiser had bene vppon a *Scire facias*, wherefore in suche case although the party cannot be suffered to recouer his possession againe by entry vpon the king, yet when the king graunts it ouer, he may now enter or haue assise, as appeareth 24. E. 3. fo. 64. & 43. li. ass. 29. Also note that this statut that geues the *Scire facias* extendes but vnto him or thẽ ỹ haue liuery or *Ouster le maine*, or any other claiminge by them. For if after liuery or *Ouster le maine* sued, a stranger by an *eigne title* in disaffirminge the tenauntes interest enter as heire vpon him, or recouer by assise of Mordauncester, or any other action aũcestrel against him, & is ẽtred into the land as heire, now because the lands are holden of the king in chiefe, his highnes may seise the saide lande for primer seisin or title of Wardship, as the case doth require, without any *Scire facias*, as appeareth in H. 21 E. 3. f. 1. For it is not to be said now a reseiser, because against him there was no seiser made of the saide landes before. And learne and enquire if hee that missueth the liuerye be within age, whether the kinge shall reseise in that case, as he shall doo if it were missued by one of ful age, as take ỹ case to be. lands are holden of the king in Socage in Capite, nowe ỹ liuery is sued within age, that is to say, at ỹ age of 14. yeres, whether in this case ỹ missuing of ỹ same shal be a cause of reseiser or not, see ỹ booke thereof *Liuery* 28. T. 12. R. 2. The wordes of the statut be further, ỹ if any record be founde in the treasory, or els where, that vpõ this record a *Scire facias*

shalbe

shalbe awarded. But that is to be vnderstand in this maner, ỹ first the transcript of the saide recozd shal be by writ remoued into the Chauncery, and then out of the Chauncery shall there be a *Scire facias* awarded, and not out of the treasozy, as it appeareth 21.li.ass. 15.

Issues mesne. Cap. xxvii.

NOte that if the king haue a title, right oz interest to any lands oz tenemets, his highnes when he seiseth shalbe answeared of all the mesne issues and pzofits from the time of his said title, right oz interest growen, and whether it be a right of entre, oz title of entre, it maketh no diuersity in the kings case, as foz an example, the king entreth foz a condition bzoken, his highnes shalbe answered of all the issues & pzofits since ỹ cõdition bzoken, & in that case a comon person shall not haue ỹ issues & pzofits but from the time of his entry 18.*ass*.18. *Entre cong*. H.19. E.3. Like law is it, if the kings tenant alien in Moztmain, & the king entreth, but otherwise it is, if he enter foz mozt-main in lands not holden of him vpon a title reuolued vnto his highnes in defaut of other lozdes M.41. E.3. folio.21. the same law is it where his highnes is entitled to seise, foz that the landes are of his foundation, and aliened contrary to the statute of Westm̃ 2 ca.41. which geues the writ of *Contra formam collationis*, in this case his highnes shalbe answered of al the mesne issues growen from the time of the alienation, as appeareth in *Forfaiture* 18. H. 46. E. 3. And note also that if the king make any grant which is not sufficient in the law, oz is deceiued in the makinge of ỹ same, by reason it was made vpõ a false suggestiõ, in this case if his ighnes hdothe resume this graunt, & adnul it *iure regis*, as he may, he shal then be answered of all the mesne issues & pzofits which were lost by reasõ of ỹ said insufficiẽt grãt, as ap-

as apereth M.11.H.4.f.5. but if his highnes be ētitled to any landes, *nomine districtionis*, there his highnesse shal not bee answeared of the profites, but from the finding of the title, as in case where the kinges tenant in chiefe alieneth without licēce, & an office is thereof found, in this case his highnes shall not be answered of the profits from ỹ time of that alienation, but only from the time of the finding of ỹ office or frō the time of a *Scire facias* returned, where the alienation is of recorde, & hereof see the booke H.8.E.4.f.4. Like law is it, where his highnes is to seise the lands of his wydow that hath maried her self wout his licence. 40.*li.ass.*36. And note that where ỹ king is to be answeared of ỹ mesne issues & profits perceiued & taken of any lands which haue come to sundry hands since the kings title first growen to the same, there euery one of thē ỹ haue sunderly perceiued & takē the profits, shal answere for his own time, & not one for al, as it appeareth in the booke of 46. before remembred. And note also ỹ by ỹ statut of W.2.ca.32. it is prouided that if any spiritual man bring any reall action & recouer, that the land recouered shal remaine in the kings hands, vntil suche time as it be sued out of his handes by him that recouered, or els by the chiefe lord, & in the meane time the sherife shal answeare the king in ỹ eschequer of the profits, by which statut, whether the collusiō be found, or not founde, yet the king shal haue the meane issues, as it is thought. T. 20.H.6.f.38. So is it in a writ iuditial of deceite brought against any, ỹ king shal haue the issues growē frō ỹ time of ỹ first iudgemēt, vntil iudgemēt be geuē in ỹ saide writt of deceit, but hereof note this difference, that in a writ of deceit vpon a recouery in a *Precipe quòd reddat* of land where ỹ proces was a *graund cape*, if ỹ pleintif recouer, he shal recouer ỹ land & his damages, but not ỹ issues of ỹ land since the first iudgement, because the king shal haue them by the *graund cape*, and the sherife accomptable of them, *Quod vide titulo Disceit in Fitzh.*33. & 46. *P.*12. *R.*2. *P.*2. *E.*3. *H.*8. *E.*3. *f.*7. & *T.*50. *E.*3. *fol.*18. Contrary lawe is it, if there lie no *grand*

cape

cape in the action, as if the recouerye be in a *Scire facias*, as it appeareth *H.17.E.3.f.12.H.41.E.3.f.2.a.43.E.3.f.32. & M.8. H.6.f.5.*

Sometime the king recouereth of ỹ issue in ỹ auowsons of an estrangers title, as if the husbande being the kinges tenant vpon a false suggestion purchaseth licence to alien, and to make estate to him and to his wife, and so doth, and afterwarde dieth, the wife holdeth her in by title of Surui-uor, and occupieth, now vpon a *Scire facias* against ỹ wife, his highnesse shalbe answeared of al the meane issues since her occuppinge of the twoo partes of the lande, and the thirde parte he occupieth and alloweth for her dower. 40. lib.ass. p.36.

FINIS.

¶ Imprinted at London in Fleetestreate
within Temple barre at the signe of the Hand
and Starre by Richarde Totttle.
Anno Dom 1573.

(.˙.)

*Cum priuilegio ad imprimen-
mendum solum.*